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In the

Supreme Court of the United States

October Term, 1987

JAMES D.,

Petitioner,

vs.

CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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QUESTIONS PRESENTED*

1.

Whether the Fourth and Fourteenth Amendments prohibit police officers from randomly detaining individuals, between 16 and 18 years of age, for the purpose of investigating possible violations of California's compulsory education laws.

2.

Whether California Education Code Section 48264, which permits police to arrest during school hours any person subject to compulsory education, who is in public and absent from school without valid excuse, is unconstitutionally vague as applied to detention of petitioner.

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* All parties to the proceeding in the California Supreme Court are listed in the caption.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Petitioner, James D., respectfully petitions this Honorable Court to issue a Writ of Certiorari to review the judgment and opinion of the California Supreme Court in a decision entitled *In re James D.* The California Supreme Court held that California Education Code § 48264, permits police officers to detain individuals, who appear to be under 18 years of age and are seen at large in the community during school hours, to determine whether they are subject to compulsory education and truant from school.

OPINIONS BELOW

The opinion of the California Supreme Court (Appendix A) is published as *In re James D.* and reported at 43 Cal.3d 903, 239 Cal.Rptr. 663 (1987). The opinion of the California Court of Appeal, Fourth District, Division Three was originally published at 164 Cal.App.3d 515 (1984). Appendix B.

JURISDICTION

The judgment of the California Supreme Court was entered on September 8, 1987.

This Petition, filed pursuant to 28 U.S.C. § 2101, subdivision c, within 90 days of the September 8, 1987 filing is timely.[1] The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

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[1] A petition seeking a declaration of wardship in the California juvenile court is, by statutory definition, a civil proceeding. The California Welfare and Institutions Code, § 203, provides: "An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding." See also Welfare and Institutions Code sections 202, 602. Thus, juvenile court proceedings in California are considered to be civil, in the nature of a guardianship, despite the criminal subject matter of a petition for wardship. *In re Schubert*, 153 Cal.App.2d 138, 141, 313 P.2d 968 (1957); *In re Bacon*, 240 Cal.App.2d 34, 62, 49 Cal. Rptr. 322 (1966).

In any case petitioner notes the petition is filed in the time within which an extension may have been granted for a criminal case and respectfully urges the Court to decide the petition on its merits if, in fact, it is deemed to be an untimely filing. Rule 20.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

This case involves the Fourth and Fourteenth Amendments to the United States Constitution, and California's statutory scheme of compulsory education. California Education Code §§ 48200, 48220-48231, 48260, 48264, 48265, 48400, 48402, 48410 & 48412. These are set forth in pertinent part in Appendix C, *infra*.

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STATEMENT OF THE CASE

On May 4, 1983 a petition was filed in the Superior Court of California for the County of Orange, sitting as the Juvenile Court, requesting that James D. be declared a ward of the Juvenile Court. It was alleged that James D. should be declared a ward under Welfare and Institutions Code § 602 in that he had been found in possession of a controlled substance, a misdemeanor violation of the Health and Safety Code of California.

At the jurisdictional hearing, James D. moved to suppress certain items of evidence, claiming that he had been detained in violation of his rights under the Fourth Amendment to the United States Constitution. Testimony at the motion to suppress evidence revealed that two police officers on patrol saw James D. walking down a public sidewalk, carrying a book bag, at about 10:30 a.m. on a school day. Guessing he was about 16 years old, the officers decided to stop and question James D., as they would routinely stop other youthful-looking people, to

discover whether he was truant from school. R.T., 4-6.[2] Neither officer testified to any specific training in the area of truancy, or receiving any information regarding truancy from the school district, and each displayed limited knowledge of the compulsory education laws. After stopping James D. they asked him for identification, where he was going, where he was coming from and where he lived. He responded that he had no identification, that he lived in Fullerton (approximately twenty miles away), and he was coming from a friend's house. R.T., 7; 59-60. In fact, James D. was a 17 year old high school graduate attending a local college. R.T., 119. The officers never informed James D. they were conducting a truancy investigation, nor did they ask why he wasn't in school. R.T., 63; 72.

During the questioning James D. appeared somewhat nervous and after a short while reached his right hand under his jacket on the left side of his chest. R.T., 9. The officers testified they directed him to remove his hand very slowly, patted down his outer clothing, and asked what was the bulge in his chest pocket. He replied it was a hairbrush and one officer reached into the coat to retrieve it. R.T., 93. After a brief struggle the officers pulled the brush out and several items fell to the ground, including what the officers suspected to be a controlled substance. James D. was arrested for possession of a controlled substance. Subsequently, the District Attorney filed a petition in the juvenile court on behalf

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2 "R.T." refers to the reporter's transcript of the proceedings in the juvenile court, by page number.

of James D., requesting that he be declared a ward of the court.

At the conclusion of testimony the trial court addressed three interrelated questions: 1) What standard should be employed to test the lawfulness of the detention? R.T., 131. 2) Was there sufficient cause to search the person of the suspected truant? R.T., 133. 3) Which of the two divergent accounts of the detention and search was the more credible? R.T., 133. Argument focused on the first question as it related to suspicion that an individual is truant, and whether the contact between James and the officers was a detention or consensual encounter under *United States v. Mendenhall,* 446 U.S. 544 (1980).

Regarding the nature of the contact the court held that, upon approaching, the officers detained petitioner R.T., 180. The trial court measured the reasonableness of this detention by the standard enunciated by the California Supreme Court in *In re Tony C.,* 21 Cal.3d 888, 148 Cal.Rptr. 366, 582 P.2d 957 (1978), a case relying upon this Court's decision in *Terry v. Ohio,* 392 U.S. 1 (1968) R.T., 162. Noting the officers weren't certain petitioner was sixteen years old and that the term "school age" could apply to people over sixteen, the trial judge found the arresting officers didn't know at what age the compulsory education laws applied. R.T., 168-170. The court found the book bag wasn't of necessity a school bag because use of these items is a current fashion. R.T., 171-172. Thus, finding the officer's suspicions were not objectively reasonable under the standard set forth in *In re Tony C., supra,* 21 Cal.3d 888, 148 Cal.Rptr. 366, 582

P.2d 957 the court granted the motion to suppress and dismissed the petition. R.T., 182.

Thereafter, on September 23, 1983, the District Attorney filed a notice of appeal. On appeal, the California Court of Appeal, Fourth District, Division Three held, *inter alia,* that California Education Code, § 48264, did not confer upon police officers the power to detain individuals to investigate possible violations of California's compulsory education laws. The District Attorney then petitioned the California Supreme Court to review the decision of the Court of Appeal, and review was granted. The California Supreme Court reversed the decision of the trial court and court of appeal, holding that the detention of James D. was proper when viewed against the "reasonable suspicion" standard set forth in *Terry v. Ohio, supra* and *In re Tony C., supra.*

> "A detention to investigate whether a person is a truant is justified when there are specific and articulable facts causing an officer to suspect, reasonably, that a *truancy violation* is occurring, and that the person he intends to detain is a truant. [Citations.]" *In re James D., supra,* 43 Cal.3d 903, 916; 239 Cal.Rptr. 663, fn. omitted.

Turning to the facts of this particular case, the court below held that the officers could reasonably suspect a truancy violation because in addition to James D.'s youthful appearance, he was "carrying a book bag [and] walking on a bridge at least three miles from the nearest school." *In re James D., supra,* 43 Cal.3d 903, 917, 239 Cal.Rptr. 663.[3] The case was then remanded to the juvenile court

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[3] While the court also noted that "school was in session," the terms of the statute expressly state that it is operative only when school is in session.

for further proceedings. On October 22, 1987 the California Supreme Court issued the remittitur, reversing and remanding the cause to the Superior Court, sitting as the juvenile court.

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REASONS WHY THE PETITION SHOULD BE GRANTED

In *In re James D., supra,* 43 Cal.3d 903, 239 Cal.Rptr. 663 the California Supreme Court has, in effect, created a second-class citizenry, albeit during a limited portion of the day, which is age-specific and based upon an individual's physical appearance. The lower court's analysis of California Education Code § 48264, and the entire scheme of compulsory education in California, permits police intrusion into the daily lives of thousands of people because they may appear 16 or 17 years old in the eyes of a particular officer. In practice, this decision would limit use and enjoyment of public places by persons exempt or excused from full-time education in a manner that offends the Fourth Amendment and traditional notions of due process and equal protection of the law.

By allowing investigative detentions regarding truancy to be predicated upon youthful appearance, without requiring additional specific and articulable facts from which an officer may reasonably suspect that a *particular* individual is truant,[4] California has chosen to afford greater Fourth Amendment protection to individuals suspected

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[4] While it is true that the court found additional facts justifying the detention, none relate to whether James D. was truant. See discussion, *ante.*

of crimes than to youthful appearing persons who venture into public during the school day. In so doing, it has disregarded decisions of this court, including *United States v. Brignoni-Ponce,* 422 U.S. 873 (1975) and *Brown v. Texas,* 443 U.S. 47 (1979), which stand for the proposition that such investigative seizures require some particularized suspicion. Thus, the lower court would permit police officers in the field unfettered discretion to initiate detentions to investigate possible truancy violations, contrary to the priciples set forth in *Delaware v. Prouse,* 440 U.S. 648 (1979) and other Supreme Court decisions.

This petition should be granted so that this Court may protect the reasonable expectation of privacy that persons who are exempt or excused from compulsory full time education in California have when they walk upon the public sidewalk during the school day. If this Court does not remedy California's disregard for, and misapplication of Supreme Court precedent, the Fourth Amendment will have no force or effect for individuals of youthful appearance while, somewhere in the community, school is in session. Finally, in this case Petitioner, James D., will have been deprived of his right to enjoy the same use of public places, free from unwarranted and indiscriminate police interference, as that afforded to his more physically mature appearing peers.

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REASONS WHY THE WRIT SHOULD BE GRANTED

1.

THE CALIFORNIA SUPREME COURT'S INTERPRETATION OF EDUCATION CODE SECTION 48264 VIOLATES THE FOURTH AMENDMENT REQUIREMENT THAT SEIZURES BE REASONABLE.

A. CALIFORNIA'S STATUTORY SCHEME FOR COMPULSORY EDUCATION CONTRADICTS THE CONCLUSION THAT A POLICE OFFICER WHO OBSERVES A 16 OR 17 YEAR OLD PERSON IN PUBLIC DURING SCHOOL HOURS MAY RATIONALLY INFER THAT INDIVIDUAL IS TRUANT.

The California Supreme Court noted that the proper test for determining the reasonableness of a detention under the Fourth Amendment involves a balancing of competing interests,

> "the public interest served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty [citation.] . . . " *In re James D., supra,* 43 Cal.3d 903, 914, 239 Cal.Rptr. 663.

In order to assure that an individual's reasonable expectation of privacy is not subject to arbitrary interference by law officers, such seizures "must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the *particular* individual . . . . " *Brown v. Texas, supra,* 443 U.S. 47, 51; *Terry v. Ohio, supra,* 392 U.S. 1, 20-21. Yet the lower court's application of these well-settled principles to the state's interest in compulsory education is an aberration of Fourth Amendment jurisprudence since *Terry, supra.*

Characterizing society's interest in an educated populace as substantial, the court opined that detentions to investigate whether a person is truant are, "as a practical matter, the *only effective means* of identifying and locating truants . . . ." *In re James D., supra,* 43 Cal.3d at 915, 239 Cal.Rptr. 663. This assertion not only lacks any foundation in practice, it ignores each school district's statutory obligations regarding unexcused absence of pupils, which are at the heart of the state's enforcement mechanism for compulsory education. Essentially, schools in California maintain a complete record-keeping system regarding student absenteeism, and are encouraged to notify parents on the day of each absence and to verify the cause thereof.[5] Where unexcused absences are identified, a detailed counselling and assistance program through school attendance review boards is implemented to prevent habitual truancy. Thus, an eminently practical and effective means for identifying and locating truants, to encourage regular full-time school attendance, already exists

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[5] California Education Code, § 48340, provides that it is the intent of the Legislature to encourage pupil attendance policies in the school districts, which includes procedures for: "(a) Notifying parents of pupil absences, including notification of parents on the day of each absence. . . . [¶](c) Auditing and accountability of pupil attendance. . . . [¶](e) Alternative learning programs designed to respond to the different ways pupils learn, such as independent study. [¶](f) Joint efforts between law enforcement and schools, such as school level attendance review teams and *periodic efforts* to return truant pupils to school." Emphasis added. The legislature has expressed its intent that the participation of law enforcement be based upon specific information from the school district, rather than random stops on patrol. Such background information was available, and a prerequisite to police action, prior to the 1974 amendments to California Education Code § 48264.

without the necessity for arbitrary detentions of individuals in the community during the school day.

James D.'s detention demonstrates just how impractical and ineffective random stops by uniformed police officers are in locating and identifying truants. Working in conjunction with the school district would train officers in problems related to truancy and provide them with reliable information from which they could form particularized suspicion about an individual suspect. Until such cooperation is required, these arbitrary detentions will never be based upon "reasonable suspicion" nor will they follow "the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

Moreover, when the prospective detainee is between 16 and 18 years old, the degree to which such detentions advance the state's interest in compulsory education is slight indeed. Simply put, 16 and 17 year olds in California are only compelled to attend classes for four (4) hours per week during the school term if employed, or 15 hours per week otherwise. California Education Code §§ 48400, 48402. In this age group numerous exemptions also excuse full or part-time school atendance. California Education Code §§ 48220-48231, 48410. Thus, the state's interest in compelling this age group to attend school full-time is far less substantial than with younger students.

The most significant flaw in California's analysis comes to light when these interests are weighed against the very significant interests of persons, like petitioner, exempt or excused from full-time education "to enjoy the use of public streets, buildings, parks and other conveniences

without unwarranted interference or harassment by agents of the law. [Citation.]" *In re Tony C., supra,* 21 Cal.3d 888, 893, 148 Cal.Rptr. 366, 582 P.2d 957. The lower court's characterization of the investigative detention as a "limited and brief intrusion" ignores the potential consequence of repeated and unwarranted detentions during the school day based upon youthful appearance.

Further, in balancing these competing interests the composition of the population subject to detention because they appear to be 16 or 17 years old belies the conclusion that such detentions are an effective means of compelling school attendance. In addition to those exempt or excused from full-time attendance under provisions of the Education Code, there is an identifiable, yet difficult to quantify, group of youthful appearing persons age 18 or older who would be subject to regular and continued detentions. Assuming that a significant majority of 16 or 17 year old persons attend school on a full-time basis,[6] of the youthful appearing people at large in the community during the school day, a *de minimus* percentage will actually be truant; the vast majority of this population will be over 18, exempt or excused from full-time attendance. Accordingly, a police officer's observation while patrolling the community during school hours of an individual who looks 16 years old does not permit, in and of itself, a rational inference that he or she is truant.

Yet California officially sanctioned such an irrational inference by pointing out several other "objective factors" leading to this detention.

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[6] California Education Code § 48410, subdivision b.

> "School was in session, and defendant, carrying a book bag, was seen walking on a bridge at least three miles from the nearest school." *In re James D., supra,* 43 Cal.3d at 917, 239 Cal.Rptr. 663.

Ultimately, the court's reliance upon these facts is nothing more than a thinly-veiled approval of detentions based upon youthful appearance alone; none of these facts permit a rational inference that petitioner was truant. By its own terms, the statute only permits truancy arrests "during school hours" and, obviously, the suspected truant must be away from school and at large in the community. To the extent that possession of the book bag indicates anything more than adherence to a current fashion, it does not have any more significant relationship to truant behavior than does, for instance, the wearing of athletic shoes.

It should be noted that none of the additional factors relied upon by the court related to James D.'s particular conduct. This Court's reasoning in *Reid v. Georgia,* 448 U.S. 438 (1980) pertains to the instant case with equal force,

> "The other circumstances describe a very large category of presumably innocent [persons], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Id.,* at 441.

Requiring an objective, articulable basis to distinguish an individual as a suspect circumscribes the standardless and unconstrained discretion which runs afoul of the Fourth Amendment. If a young person is subject to unfettered governmental intrusion whenever walking in public during school hours,

> "the security guaranteed by the Fourth Amendment would be seriously circumscribed. As *Terry v. Ohio, supra,* recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks." *Delaware v. Prouse, supra,* 440 U.S. at 663.

Thus the lower court has improperly approved detentions in the truancy context where officers rely upon nothing more than their estimate of a suspected truant's age.

By sanctioning detentions predicated upon youthful appearance alone, California rejected the principle of "resolute loyalty to Constitutional safeguards" which this Court has shown in a variety of analogous situations. For instance, as with random car stops near the border, this analysis provides no assurance "that the individual [seized] was within the proper scope of official scrutiny." *Almeida-Sanchez v. United States,* 413 U.S. 266, 271 (1973). Similarly, roving patrol stops based solely upon the apparent Mexican ancestry of passengers in a car were rejected as unreasonable in *United States v. Brignoni-Ponce, supra,* 422 U.S. 873. While the analogy to the instant situation is obvious, the lower court has disregarded this Court's analysis that in the "reasonable suspicion" equation, physical appearances are but one factor.

> "The likelihood than any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens." *Id.,* at 886-887.

The failure of California to require specific facts other than youthful appearance, from which rational inferences might reasonably warrant suspicion of truancy,

is most evident when compared to the extensive list provided in *United States v. Brignoni-Ponce, supra,* 422 U.S. at 884-885. Notably, information through official channels, past experience of the officers and the observed behavior of the suspect, including obvious attempts to evade officers, are all factors readily applicable to the truancy context.[7] The persuasive authority of the principles enunciated in *Brignoni-Ponce* was apparently lost upon the California court. It is incumbent upon this Court to ensure that tens of thousands of Californians,[8] who are exempt or excused

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[7] Prior to amendments in 1974, California required some report from the school district, through official channels, that an individual was truant as a prerequisite to a police officer's ability to arrest and assume temporary custody of a suspected truant. The deletion of this requirement, prior to this Court issuing its opinion in *Brignoni-Ponce, supra,* has vested officers in the field with excessively broad discretion because they act in an informational vacuum, upon their own inchoate hunch or mere curiosity as to a person's age. *Terry v. Ohio, supra,* 392 U.S. at 27; *In re Tony C., supra,* 21 Cal.3d at 893, 148 Cal.Rptr. 366, 582 P.2d 957.

[8] This figure represents a somewhat conservative estimate of the subject population. Figures submitted to the lower court by the State Department of Education indicate that during the 1985-1986 school year more than 94,000 students age 16 to 18 elected to attend part-time continuation classes, rather than full-time, at some point during the school year. In excess of 20,000 others were exempt or otherwise excused from attendance upon full-time or part-time classes. In addition to these figures it should be noted that many school districts in California are converting to year-round schedules. Thus approximately 25% of any school district will not be required to attend at various times throughout the year. Adopting the figures used by the lower court, in Los Angeles County, when year-round schools are fully implemented, approximately 125,000 of the over 500,000 high school students in the district will be at large in the community while their cohorts are in school. The sheer magnitude of these numbers demonstrates how the uniformed officer on patrol could not reasonably rely on youthful appearance to infer a person is truant from school.

from full-time education but appear to be 16 or 17 years old, are provided the same Fourth Amendment protections as their neighbors of Mexican ancestry and common criminals.

B. THE OPINION OF THE CALIFORNIA SUPREME COURT RELEGATES 16 AND 17 YEAR OLD PERSONS TO A DIMINSHED EXPECTATION OF PRIVACY WHILE SCHOOL IS IN SESSION.

In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) the Court recognized that the special characteristics of the school environment required easing of the restrictions upon public authorities to conduct searches. Thus a reasonable suspicion standard, rather than traditional probable cause analysis, was found adequate to determine the reasonableness of searches by school officials, on school grounds. This rule flowed from the premise that society has a substantial interest in maintaining order in the schools. Therefore students, on balance, have a more limited expectation of privacy that society is prepared to recognize as legitimate while they are at school. California has adopted this approach in *In re William G.*, 40 Cal.3d 550, 221 Cal.Rptr. 118, 709 P.2d 1287 (1985). Significantly, *T.L.O.* is limited in application to searches and seizures occurring on the school premises.

Now, however, California has elevated the state interest in education to unprecedented levels in the balancing process of Fourth Amendment analysis. First, it has expanded the limitations upon a 16 or 17 year old's expectation of privacy beyond the school premises; so long as classes are in session these young people are bereft of

their Fourth Amendment protections from arbitrary interference in their daily lives if they venture into public. Second, because youthful appearance does not permit a rational inference of truancy, the lower court has promulgated a standard for assessing police conduct far more lax than reasonable suspicion. Neither of these steps is justified by the state's educational goals, nor do they comport with the Fourth Amendment concept of reasonableness. This Court must not countenance such blatant disregard for the legitimate privacy interests of persons exempt or excused from compulsory education.

2.

CALIFORNIA EDUCATION CODE SECTION 48264 IS UNCONSTITUTIONALLY VAGUE IN APPLICATION TO INDIVIDUALS EXEMPT FROM COMPULSORY EDUCATION.

While California never reached the issue of whether the statute in question is unconstitutionally vague, petitioner did raise the argument in the lower court and this important federal question requires resolution to avoid any future denial of due process for persons exempt or excused from compulsory education. The vagueness of California Education Code § 48264 is apparent when a detention is initiated. The statute fails to adequately describe or delimit the scope of such a detention, an issue tied to the second step of this Court's Fourth Amendment analysis in *Terry v. Ohio, supra*, 392 U.S. 1. The court must ask whether the seizure "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*, at 20.

As the questioning in the instant case amply demonstrates, the statute provides no criteria by which an offi-

cer's conduct during the investigation may be judged. What questions may be asked and what type of answers will suffice? Further, what constitutes a valid excuse? Thus, the 19 year old, who looks 16 or 17, or the 17 year old college student, like petitioner, lacking documentary evidence of age or identity may not be able to persuade a patrol officer that they are not subject to compulsory education. Indeed, as the statute reads on its face the officer may exercise his or her unfettered discretion to *arrest*, and transport in custody, any detainee who proffers "unacceptable" answers.

> "Statutory language of such a standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections. Legislatures may not so abdicate their responsibilities for setting the standards of the criminal law. [Citations.]" *Smith v. Goguen*, 415 U.S. 566, 575 (1974).

The only California court which has addressed the valid excuse issue has, in effect, approved such unbridled discretion for law enforcement. In *In re Miguel G.*, 111 Cal.App.3d 345, 168 Cal.Rptr. 688 (1980), the minor offered the excuse of being late, which the court summarily rejected as invalid. The court went further, interpreting this requirement as "an affirmative defense which the minor must assert." *Id.*, at 349. But the court failed to indicate what an officer should do when the suspected truant refuses to provide any information[9] or offers a more substantial excuse, such as the one petitioner may have offered if asked any questions relevant to truancy;

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[9] *Kolender v. Lawson*, 461 U.S. 352 (1983).

to wit, that he was a high school graduate attending college.

If, as the lower court suggests, a failure to produce identification permits further detention, then people like petitioner must maintain proof of their exempt status whenever in public during school hours. See *In re James D., supra,* 43 Cal.3d at 918, fn. 8, 239 Cal.Rptr. 663. Because the officer is the ultimate arbiter, during the detention in the community, of what constitutes an excuse or identification, this statute suffers from the same constitutional defect as former California Penal Code § 647, subdivision e, condemned in *Kolender v. Lawson, supra,* 461 U.S. 352. The lack of any standards governing detentions and arrests under California Education Code § 48264 and providing guidance as to what constitutes a valid excuse or, as in *Kolender,* proper identification, leads inextricably to the conclusion that the statute is unconstitutionally vague on its face, and as applied to petitioner. Further, "this is not a case where further precision in the statutory language is either impossible or impractical." *Id.,* at 361. It remains for this Court to require greater statutory precision from the California Legislature so as to afford petitioner and thousands of young Californians, as well as future generations, due process and equal protection under the Fourteenth and Fourth Amendments.

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CONCLUSION

Accordingly, for all the aforementioned reasons, Petitioner respectfully urges this Court to grant his petition and reversed the decision of the California Supreme Court.

DATED: December 3, 1987.

Respectfully submitted,

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APPENDIX A

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re JAMES EDWARD D., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Appellant, v. JAMES EDWARD D., a minor, Defendant and Respondent.	L.A. 32050 (CA 4 G000443) (Super. Ct. No. J-118402) (Filed Sept. 8, 1987)

The People appeal from a judgment dismissing a juvenile court petition after defendant's motion to suppress evidence was granted. We reverse and remand.

I.

About 10:30 a.m. on February 28, 1983, Police Patrol Officers Jacobs and Natale saw defendant, carrying a book bag, walking on a sidewalk over a bridge. Because he appeared to be 15 to 16 years old, they decided to ask him why he was not in school, in order to determine if he was a truant. They therefore made a U-turn, drove back to where he was walking, and stopped their car. As he approached, both officers got out and asked if they could talk with him. Defendant said "sure" and walked over to them.

Officers Jacobs asked if defendant had identification; defendant said he had none. Jacobs then asked defendant from where he was coming, his destination, and where he lived. Defendant replied he had come from a friend's house, but could remember neither the friend's name, nor could he point out the house; he also said he was walking to a bus stop. He appeared nervous and hesitant, and his voice was shaky. When he suddenly shoved his hand beneath his jacket, Jacobs told him to slowly remove his hand, and then patted the outside of his clothing for weapons. He felt, and attempted to remove, a hard object. Defendant resisted, and both officers forced his arms to his side and jerked the object out of his inside pocket. A hairbrush and an open envelope fell to the ground. The officers saw in the envelope a piece of paper containing green dots; they recognized this to be LSD in blotter form. Defendant was arrested and charged with possession of a controlled substance.

At a juvenile court jurisdictional hearing, defendant moved to suppress the LSD as the fruit of an unlawful detention. (Welf. & Inst. Code, § 700.1.) He asserted he was in fact a 17-year-old high school graduate, hence not subject to any compulsory education law. He also asserted the officers had no reasonable basis on which to detain him; thus, he claimed, the contraband discovered in the patdown was tainted and must be excluded. The People argued the interaction here did not rise to the level of a detention and that, in any event, the "detention" and subsequent discovery was proper under state law.

Focusing on the officers' testimony that they "stopped" defendant, the trial court concluded the en-

counter amounted to a detention, and that under *In re Tony C.* (1978) 21 Cal.3d 888, the detention was not justified. It expressly accepted the officers' testimony that they subjectively believed defendant to be 15 to 16 years old. The court concluded, however, that under *Tony C.* the officers lacked objective, reasonable suspicion that defendant was a truant. It therefore granted defendant's motion to suppress, and thereafter entered judgment dismissing the petition.

On appeal, the People argue the encounter was merely "consensual," and hence triggered neither the Fourth Amendment nor the corresponding provision of our state's Constitution. Alternatively, they claim, the trial court erred in holding the detention unlawful. The Court of Appeal affirmed, essentially ignoring the first claim, and holding that only an officer's *actual knowledge of a student's truant status* justifies a detention for the purpose of enforcing the truancy statutes.

II.

By statute, all children aged 6 to 16 must attend school full time (Ed. Code § 48200; all further citations are to this code unless otherwise indicated) unless exempted from that requirement for various reasons (§§ 48220-48232). Similarly, *those between 16 and 18 must attend continuing education classes* for four hours each week (§ 48400)—or, if not regularly employed, for fifteen hours each week (§ 48402)—unless specifically exempted from doing so (§ 48410.) Section 48264 provides: "[A] peace officer . . . may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education *or to compulsory continuation education* found away from his home and who is absent from school without valid

excuse . . . ." (Italics added.) Among those exempted from the continuing education requirement are (i) high school graduates, (ii) those who qualify for and have passed a "proficiency examination," and (iii) *those who still attend a public or private full-time day school.* (§ 48410, subds. (a), (e) & (b).)[1] Thus, in practical effect, the legislative scheme provides that unless *a person between the ages of 16 and 18* is (i) enrolled in a contiuing education program, (ii) is a high school graduate or has passed the "proficiency examination," or (iii) qualifies under other miscellaneous exemptions (ante, fn. 1), he "*must be enrolled in a compulsory full-time education program and must be in school during school hours or else he is subject to a section 48264 arrest.*" (In re Miguel G. (1980) 111 Cal.App.3d 345, 349, italics added.)[2]

The effect of an arrest under section 48264 is very different from the effect of a typical criminal arrest. The emphasis is not on punishment but on correction of truancy, i.e., to promote attendance in order that students may be educated. A minor so restrained is to be delivered "either to the parent, guardian, or other person having control, or

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[1] Additional exemptions from compulsory continuing education requirements apply to those who (i) "[a]re disqualified for attendance upon these classes because of their physical or mental condition, or because of personal services that they must render to their dependents," or (ii) "[a]re satisfactorily attending a regional occupational program or center," or (iii) attend classes for adults for at least 4 hours per week, or (iv) have arrived from out-of-state within 10 days before the end of the school term. (§ 48410, subds. (c) (d), (f) & (g).)

[2] Statistics compiled by the State Department of Education disclose that a substantial majority of persons aged 16 to 18 qualify for exemption from compulsory continuing education by reason of "attendance upon a public or private full-time day school" (§ 48410, subd. (b)).

charge of the minor, or to the school from which the minor is absent," or to other designated persons whose role is that of counselor. (§ 48265.) The Education Code establishes a comprehensive mechanism for dealing with truants ranging from resort to various community programs, to special mediation programs. (§§ 48263.5, 48320 et seq.) Truants are not, except in aggravated circumstances involving "habitual" offenders, subject to the jurisdiction of the juvenile courts. (Welf. & Inst. Code, § 601, subd. (b); Ed. Code, § 48263.)

In establishing this scheme the Legislature expressed its intent to provide "intensive guidance and coordinated community services . . . to meet the special needs of pupils with school attendance problems . . . ." (§ 48320, subd. (a).) Its stated goal was "to encourage school districts and county offices of education . . . to adopt pupil attendance policies based on the active involvement of parents, pupils, teachers, administrators, other personnel, and community members" in order to, inter alia, provide procedures for "[j]oint efforts between law enforcement and schools, such as school level attendance review teams and periodic efforts to return truant pupils to school." (§ 48430, subd. (f).) With this overall picture in mind, we turn to the constitutional issues.

III.

As noted, the trial court found there was an illegal detention under state law, i.e., under *Tony C.*, supra, 21 Cal.3d 888. In *Tony C.* we addressed the distinction between (i) police-citizen encounters that trigger analysis under the Fourth Amendment and the corresponding provision of our state's Constitution (art. I, § 13), and (ii)

police-citizen encounters that do not trigger constitutional concerns. Noting that "[t]he question . . . is where to draw the line," we *rejected* one suggested test—which would have focused on whether the suspect was free to leave the police officer's presence (21 Cal.3d at p. 895)—and adopted instead "[a] more fruitful approach" focusing on the purpose of the encounter itself. (*Ibid.*)[3]

As we held after the trial court's ruling in this case, however, article I, section 28, subdivision (d) of the California Constitution controls all cases occurring after June 9, 1982. (*People v. Smith* (1983) 34 Cal.3d 251, 257-263.) Under *In re Lance W.* (1985) 37 Cal.3d 873, 896, questions about exclusion of evidence must be resolved under federal, and not state law.

A. *"Consensual Encounters" Under Federal Law*

The trial court apparently assumed the initial encounter amounted to a detention, and proceeded to deter-

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[3] We stated: "If the individual is stopped or detained because the officer suspects he may be personally involved in some criminal activity, his Fourth Amendment rights are implicated and he is entitled to the safeguards of the rules [governing justification for an investigative detention]. But similar safeguards are not required if the officer acts for other proper reasons. Such reasons are obviously too many and varied to recite, but they may be grouped in at least two general categories: (1) the officer may wish to question the person not as a suspect but merely as a witness to a crime, or (2) the officer may be engaged in one of 'those innumerable miscellaneous tasks which society calls upon police to do which have nothing to do with the detection of crime.' (Batts v. Superior Court (1972) . . . 23 Cal.App.3d 435, 438), such as giving aid to persons in distress, mediating domestic quarrels, assisting the elderly or the disabled, furnishing traffic advice or directions, and generally preserving the peace and protecting persons from harm or annoyance. (See *id.* at pp. 438-439.)" (*Tony C.*, supra, 21 Cal.3d at pp. 895-896.)

mine whether the "detention" was justified. As we explain below, it appears the court failed to recognize that under recent cases of both this and the United States Supreme Court, the encounter here may not have implicated federal constitutional concerns.

"For purposes of Fourth Amendment analysis, there are basically three different categories or levels of police 'contacts' or 'interactions' with individuals, ranging from the least to the most intrusive. First, there are what Justice White [in *Florida v. Royer* (1983) 460 U.S. 491 (plur. opn.)] termed 'consensual encounters' (*id.* [460] U.S. at p. [506] [75 L.Ed.2d at p. 243, 103 S.Ct. at p. 1329]), which are those police-individual interactions which result in no restraint of an individual's liberty whatsoever—i.e., no 'seizure,' however minimal—and which may properly be initiated by police officers even if they lack any 'objective justification.' (*Id.* [460] U.S. at p. [497] [75 L.Ed.2d at p. 236, 103 S.Ct. at p. 1324].) Second, there are what are commonly termed 'detentions,' seizures of an individual which are strictly limited in duration, scope and purpose, and which may be undertaken by the police 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' ([*Id.*, 460 U.S. at p. 498].) Third, and finally, there are those seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests and restraints on an individual's liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have probable cause to arrest the individual for a crime. (*Id.*, [460] U.S. at p. [499] [75 L.Ed. 2d at p. 237, 103 S.Ct. at p. 1325].)" (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.)

As Justice Kaus noted for a unanimous court in *Wilson,* supra, the *Royer* (*Florida v. Royer,* supra, 460 U.S. 491) decision affords considerable guidance about the high court's test for determining whether citizen-police interaction amounts merely to a "consensual encounter," or rises to the level of a "detention." The facts of *Royer* are explained in detail in *Wilson;* in essence the case involved the detention and arrest at an airport of a person who matched a so-called "drug courier profile." The high court's lead opinion noted: "*[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.* [Citations.] *Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification.* [Citation.] The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations.] He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. [Citation.] If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed." (460 U.S. at pp. 497-498, italics added.)

We observed in *Wilson,* "this passage gives some indication of the attributes of a consensual encounter, [but] it does not in itself set forth a clear constitutional standard

for distinguishing such an encounter from a detention. That additional guidance is provided in a subsequent passage, where the lead opinion, in rejecting the state's contention that the 'entire encounter was consensual,' states: 'Asking for and examining Royer's ticket were no doubt permissible in themselves, but when the officers identified themselves as narcotic agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment. *These circumstances surely amount to a show of official authority such that "a reasonable person would have believed that he was not free to leave." United States v. Mendenhall* [(1980)] 446 U.S. 544, 554 (Opinion of Stewart, J.).' (Italics added [in *Wilson*].) ([460] U.S. at [pp. 501-502] [75 L.Ed.2d at p. 239, 103 S.Ct. at p. 1326].)" (34 Cal.3d at pp. 789-790.)

We concluded in *Wilson:* "In light of the emphasized language and the citation of *Mendenhall,* it is now clear that a substantial majority—and perhaps all—of the Supreme Court justices agree with the standard set forth by Justice Stewart in his separate opinion in that case: '[*A*] *person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.*'[4]

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[4] Immediately thereafter, Justice Stewart's opinion states: "Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threat-

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(*United States v. Mendenhall, supra,* 446 U.S. at p. 554 [64 L.Ed.2d at p. 509].)" (34 Cal.3d at p. 790, fn. omitted, italics added.)

From the record, it appears the trial court never considered the issue of whether the interaction here amounted to a detention or a mere "consensual encounter" under the proper standard as expressed in *Royer, supra,* 460 U.S. 491, *Mendenhall, supra,* 446 U.S. 544, and *Wilson, supra,* 34 Cal.3d 777. Had the court done so, it may well have justifiably concluded this encounter was "consensual" under the high court's description of that term. Assuming, as did the trial court and the Court of Appeal, that a reasonable person in this circumstance would have felt himself not free to leave (and because there appears to be considerable confusion about the proper standard for determining the justification for such a presumed detention), we will proceed to determine the circumstances in which a "detention" to investigate a possibile truancy violation is permissible.

B. *Detentions Under Federal Law*

As an initial matter we note that "[a]lthough each case [involving detention for questioning or limited in-

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ening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. [citations.] *In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." (Id.,* at pp. 554-555, italics added.)

vestigation] must be decided on its own facts . . . [t]he guiding principle, as in all issues arising under the Fourth Amendment and under the California Constitution . . . is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' (*Terry v. Ohio* [(1968)] 392 U.S. [1, 19].)" (*Tony C., supra,* 21 Cal.3d at p. 892.)

The federal test for determining whether a detention is justified involves a weighing of (i) the public interest served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty (e.g., *Brown v. Texas* (1979) 443 U.S. 47, 50-51) and (ii) the officer's reasonable suspicion that a crime has occurred or is occurring (*ibid.*).[5] On the latter point, the United States Supreme Court's cases provide, "certain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person has committed or is about to commit a crime" (*Royer, supra,* 460 U.S. 491, 498, paraphrasing *Terry v. Ohio, supra,* 392 U.S. 1), and that "reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of questioning limited to the purpose of the stop." (*Royer, supra,* 460 U.S. at p. 498, paraphrasing *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 881-882.)

Relying on both federal cases and our own cases, we have acknowledged the same initial considerations (e.g.,

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[5] As an alternative to the reasonable-suspicion requirement in some cases, the high court has stated it will allow seizures "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers. [Citations.]" (*Brown, supra,* 443 U.S. at p. 51.)

Tony C., supra, 21 Cal.3d at pp. 892-893) and, with regard to the second consideration, we have expressed essentially the same standard: "[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience (*People v. Superior Court (Kiefer)* [(1970)] 3 Cal.3d [807, 827]), to suspect the same criminal activity and the same involvement by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. (*Terry v. Ohio, supra,* 392 U.S. at p. 22 [20 L.Ed.2d at pp. 906-907].)" (*Tony C., supra,* 21 Cal.3d 888, 893, fn. omitted.)

1. *Balancing Public and Private Interests*

The inital area of inquiry is designed to determine whether the underlying conduct warrants detention for the purpose of investigation *in the abstract.* Courts have long recognized the importance of education to both the individual and to society (see, e.g., *Plyer v. Doe* (1982) 457 U.S. 202, 221-222; *McCollum v. Board of Education* (1948) 333 U.S. 203, 231 (Frankfurter, J., conc.)), and defendant does not question the propriety of the compulsory educa-

tion laws (which, as noted, cover persons aged 6 to *18*) as a legitimate means of achieving that objective. As noted above, the legislative scheme is directed toward reforming and returning the truant student to school, and not toward punishment or imposition of traditional criminal sanctions. We conclude that the governmental interest in enforcing its truancy laws in order to achieve its educational goal, is substantial.

Second, we agree with the People and various amici curiae that investigation and "arrest" pursuant to section 48264 substantially advance the public interest in enforcing the state's compulsory education laws. Defendant's suggestion that such goals can be achieved by "arrest" of persons *actually known* to be truants is, as amici curiae State Superintendent of Public Instruction Bill Honig et alii point out, highly questionable. Los Angeles Unified School District, we are told, has about one-half million students enrolled. Like amici curiae, we find it "ludicrous to assume that law enforcement and school officials would have the slightest chance of intercepting those few students [actually] known by them to be truant." We therefore agree that a section 48264 detention for the purpose of investigating whether a person is a truant is, as a practical matter, the *only effective means* of identifying and locating truants and hence substantially advances the state's compulsory education goals.

Finally, on balance, we find the degree of interference with personal liberty occasioned by a "truancy detention" to be slight. Questioning must, of course, be strictly limited to the purpose of the stop. (See e.g., *Brignoni-Ponce,*

supra, 422 U.S. at 881-882.) As explained above, the sole purpose of a truancy "arrest" is to return the absent student to school as expeditiously as possible. Therefore, "[t]he 'arrest' that takes place under section 48264 is a severely limited type of arrest and may not be used as a pretext for investigating criminal matters." (*Miguel G., supra,* 111 Cal.App.3d at p. 349; *In re Jorge S.* (1977) 74 Cal.App.3d 852, 857.) Likewise, the sole purpose of a truancy *detention* is to investigate whether a particular person is a truant, and if he is in fact a truant, to place him under a section 48264 "arrest" in order to return him to school. We are unwilling to conclude that the limited and brief intrusion required for such an investigative detention outweighs the legitimate governmental interest here involved.[6]

2. *Reasonable Suspicion*

The second area of inquiry is designed to determine whether sufficient objective facts support the detention in the case at hand, and thereby to guard against aribtrary invasion of privacy. As noted above, we perceive no appreciable difference between the cases of this court, and the United States Supreme Court, on the standard to be applied. A detention to investigate whether a person is a truant is justified when there are specific and articulable facts causing an officer to suspect, reasonably, that a *tru-*

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[6] Defendant asserts that any detention standard less than "actual knowledge of truancy" will result in wholesale arbitrary interference with citizens. We believe, as explained below, that the traditional test for determining the justification for a detention applies in this context, and sufficiently guards against the perceived danger.

ancy violation[7] is occurring, and that the person he intends to detain is a truant. (*Tony C., supra,* 21 Cal.3d at p. 893; *Brown, supra,* 443 U.S. at p. 51; *Brignoni-Ponce, supra,* 422 U.S. at pp. 881-882.)

Defendant asserts that a truancy detention premised in part on "youthful appearance," fails to provide a sufficiently objective standard to guard against arbitrary seizures. In essence, he claims, such a detention falls short of the "reasonable suspicion" requirement.

We reject defendant's suggestion that youthful appearance is an inherently subjective factor and hence cannot serve as a basis for detention. To the contrary, a suspected truant's youthful appearance is a matter that can be objectively verified by the court. The judge at a suppression hearing should be able to determine, from looking at the defendant and taking into account any changes in his appearance since the event, whether the officer's estimation of age was reasonable. Of course there may be cases in which the officer's estimation about an individual's age turns out to be wrong, or in which the youth is, like here, within that group of minors excepted for various reasons from full-time school attendance requirements (*ante,* pp. —— [typed opinion at pp. 4-5]). But those after-discovered facts would not render the officer's

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[7] Previous cases generally speak of specific and articulable facts showing a particular person is committing or has committed a "crime." Defendant's observation that truancy technically does not amount to a crime in this state (Pen. Code, § 15) does not suggest the "specific and articulable facts" test is inapplicable in truancy cases. As we have explained above, truancy is, on balance, conduct that warrants detention for the purpose of investigation, and we conclude the "specific and articulable facts" test is easily adapted to the truancy context.

on-the-spot estimation of the individual's age unreasonable, nor would they detract from other articulable facts supporting detention that were perceived by the officer.

Youthful appearance, we conclude, is a highly relevant and objectively verifiable *factor* in determining the propriety of a truancy detention. Moreover, as the People observe, a proper detention to investigate whether a person who appears to be between 6 and 18 is a truant cannot be based on youthful appearance alone. Among other limitations, such a detention would be permissible only during school hours.

C. *Propriety of the Detention in this Case*

As an initial matter, we reiterate it is far from clear that a detention occurred under the *Royer* test. (*Ante,* pp. —— [typed opinion at pp. 8-12].) Assuming, nevertheless, that a detention occurred, the trial court's determination that the officers lacked reasonable suspicion to justify a detention cannot stand.

In the course of the suppression hearing, the trial court advanced at least three bases for its conclusion that the officers lacked reasonable suspicion to detain defendant. We conclude *none* of the court's explanations supports its conclusion that the officers lacked reasonable grounds to suspect defendant might be a truant.

Initially, the court suggested the officers acted unreasonably because, it asserted, they based their suspicion on defendant's "general appearance *and nothing more.*" (Italics added.) Although "youthful appearance *and nothing more*" would not justify a detention to investigate whether a person is a truant, there was in fact "some-

thing more" in this case. School was in session, and defendant, carrying a book bag, was seen walking on a bridge at least three miles from the nearest school.

Elsewhere in the hearing transcript the court suggested the officers lacked reasonable suspicion because, in addition to (i) defendant's "youthful appearance" and (ii) other objective facts noted above of which they were aware, the officers needed "some *other reason* to believe [defendant] was *involved in a specific crime.*" (The court made this comment in the course of distinguishing cases cited by the People, all of which, the court suggested, involved (a) some kind of *actual notice*—"through the air waves or police radios"—(b) that "*a certain person* . . . had committed [a *crime*].") Contrary to the trial court's understanding of the law, officers need no "actual notice" that any particular person has committed "a crime" (nor, for that matter, that a particular person is *in fact* a truant), in order to justify a detention to investigate whether a truancy violation is occurring.

Finally, at the conclusion of the hearing the court suggested—without explicitly saying so—that it considered the officers' estimation of defendant's age unreasonable, and that therefore, they lacked reasonable suspicion to justify the detention. In so "ruling," the court suggested that no reasonable officer would have concluded defendant was *16 years old* or younger.

Contrary to the court's apparent understanding of the reach of the compulsory education laws, those statutes—including the "arrest" provision (§ 48264)—apply not only to persons between 6 and 16, but also to those between 16 and 18. By implicitly concluding that no rea-

sonable police officer would have thought defendant to be *16 or younger,* the court never focused on the real question to be answered here, i.e., whether under all the circumstances the officers reasonably believed this defendant to be school age—between 6 and *18*—and hence subject to full-time education requirements. (*Ante,* pp. ——— [typed opinion at pp. 4-5].)

Accordingly, we must remand the matter to the trial court for a proper determination of whether, under the circumstances, there existed reasonable suspicion to justify a detention.[8] As a preliminary matter, however, the court should also reconsider—in light of *Wilson, supra,* 34 Cal.3d 777, and *Royer, supra,* 460 U.S. 491,—whether the initial police-citizen interaction here rose to the level of a detention, or amounted merely to a "consensual encounter" which, as noted, does not trigger Fourth Amendment concerns.

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[8] For the trial court's guidance on remand, we note that we would reject any claim that the police-citizen contact here exceeded the permissible scope of a "truancy stop." Our review of the record discloses the officers' conduct and questions were within the strictly limited purposes of the detention, i.e., to determine whether defendant was a truant. (Cf., *Brignoni-Ponce, supra,* 422 U.S. at pp. 881-882 ["The officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause."].) The officers first asked for defendant's identification; being told he had none, they asked his destination and from whence he had come. All of these questions reasonably were designed to determine whether defendant was a truant, and we would not conclude the questioning exceeded the permissible scope of the stop merely because we might be able to fashion more direct and piercing questions that may have gone to the root of the matter a bit sooner. Finally, the delay does not appear to have been excessive. The encounter described could not have lasted more than a minute before defendant's ill-timed sudden motion into his jacket.

The judgment dismissing the petition is reversed and the cause is remanded to the juvenile court for further proceedings consistent with this opinion.

LUCAS, C.J.

WE CONCUR:

Mosk, J.
Panelli, J.
Arguelles, J.
Eagleson, J.
Kaufman, J.

DISSENTING OPINION BY BROUSSARD, J.

I dissent. The judge of the juvenile court viewing James D. determined that it was unreasonable to conclude he was under the age of 16, that the police officers did not have a reasonable suspicion that he was a truant, and that the detention was unlawful. The majority conclude that during school hours persons appearing to be between the ages of 16 to 18 may be detained on public streets for investigation of truancy solely on the basis of their youthful appearance and that because the trial court did not determine whether it was reasonable to conclude that James was under 18, its order must be reversed.

In my view, the trial court was correct in concluding that the crucial issue was whether the officers could reasonably conclude that James was under the age of 16, not 18, and the trial court's order should be affirmed.

Section 48264[1] provides that a peace officer may arrest or assume temporary custody "during school hours" of

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[1] All statutory references are to the Education Code.

any minor "subject to compulsory full-time education or to compulsory continuation education" found away from his home and who is absent from school without valid excuse.

It is settled that the guiding principle in cases involving temporary detention for questioning, "as in all issues arising under the Fourth Amendment and under the California Constitution . . . is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' (*Terry v. Ohio, supra,* 392 U.S. at p. 19.)" (*In re Tony C.* (1978) 21 Cal. 3d 888, 892.) As was pointed out in *Tony C.*, because of the limited scope of a detention for questioning, it need not be supported by the actual belief in guilt required to arrest. "Yet the interest at stake is far from insignificant: it is the right of every person to enjoy the use of public streets, buildings, parks, and other conveniences without unwarranted interference or harassment by agents of the law. . . . 'A police officer may not use the authority of his uniform and badge to go around promiscously bothering citizens.' " (21 Cal.3d at pp. 892-893.)

"Detentions," seizures of an individual which are strictly limited in duration, scope and purpose, may be undertaken by the police " 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' " (*Florida v. Royer* (1983) 460 U.S. 491, 498; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.) In order to justify an investigative stop or detention, "the circumstances known or apparent to the officer must include specific or articulable facts causing him to suspect that (1) some activity relating to crime has taken place

or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that acivity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience . . . to suspect the same criminal activity and the same involvement by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch, is unlawful, even though the officer may be acting in complete good faith." (*In re Tony C., supra,* 21 Cal.3d at p. 893, fn. omitted.)

In order to determine whether the presence on the public streets during school hours of a person appearing to be 16 or 17 furnishes a reasonable suspicion of truancy, we must look at the statutes governing school attendance and truancy.

Full-time school attendance is required only of those between 6 and 16, and there are a number of exemptions. Obviously this portion of section 48264 permitting "arrest" of minors subject to compulsory full-time education does not warrant detaining persons who are apparently 16 and 17 years old.

Thus, the detention of 16- and 17-year-olds during school hours for truancy investigation can be justified, if at all, on the ground that they are subject to "compulsory continuation education" and are in violation of their obligation. Section 48400 requires 16- and 17-year-olds to attend special continuation education classes for at least 4 hours per week for the school term. Section 48402 re-

quires 15 hours per week for those not regularly employed. However, there are numerous exemptions for physical and mental health, personal services that must be rendered to dependents, attendance at a regional occupational program or center, attendance at adult school, special programs for mentally gifted students, for suspended and expelled students, leaves of absence for study travel or work, arriving from out of state within 10 days of the end of the semester, excuses applicable to persons under 16, and attendance at part-time classes of certain agencies. (§§ 48410, 48223-48227, 48230, 48232, 48900.)

In addition to the exempt 16- and 17-year-olds, there may be numerous others of that age who may be away from school premises during normal school hours without being truants, such as those on an errand for a school official, going to a doctor's or dentist's appointment, in transit to an athletic event, returning home because of injury or illness, or engaging in public service in conjunction with school activities. (§ 48205; *In re Tony C., supra,* 21 Cal.3d 888, 897.)

There is one other group that is exempt from compulsory continuation education, namely, those in attendance at a full-time public or private day school. (§ 48410, subd. (b).) Assuming that this group would be truant if away from the school premises during normal school hours without valid excuse, it does not follow that when during school hours a person appearing to be 16 or 17 is observed in a public place there is reasonable suspicion that the person is a truant.

There is no doubt that the Legislature has established a clear policy in favor of full-time education of our youth

and against truancy. However, as to 16-and 17-year-olds that policy must be viewed in the light of the statutory provisions permitting 16- and 17-year-olds to opt in favor of obtaining jobs in which case the statutes require only 4 hours per week school attendance. In addition 16- and 17-year-olds who do not obtain jobs may opt in favor of 15 hours per week rather than full-time education. Because of the options provided, it is apparent that the legislative goal of full-time education for 16- and 17-year-olds is based largely on the concept of voluntary adoption of the goal by the student.

Weighed against the limited legislative policy applicable to 16- and 17-year-olds is the interest of persons exempt or excused from full-time education "to enjoy the use of public streets, buildings, parks and other conveniences without unwarranted interference or harassment by agents of the law." (*In re Tony C., supra,* 21 Cal.3d 888, 893.) And when the basis of police detention is solely appearance of 17 or under, the concerned interests include not only those of persons under 18 but also youthful appearing persons who may be 18 or older.

In weighing the statutory policy of providing for arrest of truants against the constitutional interests involved, we must also bear in mind that the provisions of section 48264 do not provide that peace officers shall or should arrest truants but only that they "may" arrest or assume temporary custody of truants. Use of the permissive rather than the imperative suggests that the legislative policy of enforcing truancy provisions is limited and to be enforced only in the clearest of situations, those where the student is under 16 and required to attend full-

time. Coupled with the legislative policy to encourage voluntary full-time education of 16- and 17-year-olds rather than requiring full-time education, the use of the permissive can only further indicate that the legislative policy to compel full-time attendance of that age group is a limited policy.

The limited policy reflected by the above considerations suggests that the provision of section 48264 permitting arrest of minors "subject to . . . compulsory continuation education" should be interpreted literally to apply only to those who have opted to forego full-time education and to enroll in the limited continuation education program and should not apply to any exempt persons including those exempt by reason of enrollment in full-time education. The Legislature may have felt that it would be counter-productive to arrest 16- and 17-year-olds enrolled as full-time students because the arrests would drive truants to more limited programs. However, it is unnecessary for me to determine the issue because the majority do not discuss it and even if the statute permits arrest of students not enrolled in the limited programs, the detention in the instant case may not be upheld.

Weighing the competing interests, we must also recognize that there is little that the youthful appearing person who is over 18 or who is exempt or excused from full-time education requirements can do to avoid detention during school hours short of giving up his right to be present in public places. If he chooses to appear in public places, he runs the risk of regular and continued detentions for investigation of truancy. A high school graduate like James should carry his diploma at all times during school hours.

But even assuming that there was a strong legislative policy to require full-time school attendance of 16- and 17-year-olds, we are still confronted with the basic rule that before an investigative stop or detention is permitted, as we have seen, it must be objectively reasonable for the officer to suspect that activity relating to crime is occurring or about to occur and that the person detained is involved in the activity. Because there are so many appearing to be 16 or 17 years old who are 18 or over or are exempt or excused from full-time education requirements, it is not reasonable for an officer to assume that, when a person appearing to be 16 or 17 years old is observed in a public place during school hours, there is a substantial probability that the person is a truant. (See *United States v. Brignoni-Ponce* (1974) 422 U.S. 873, 885-887 [appearance of Mexican ancestry does not furnish a reasonable suspicion for stop to determine whether they are illegal aliens].)

It may be true that a majority of 16- and 17-year-olds enroll in full-time educational programs, but that is not the crucial figure. At any given time only a small percentage of those students will be truant and in public places. The crucial comparison in determining reasonable suspicion where the sole ground for detention is youthful appearance is the relationship of truants in public places during school hours to persons having youthful appearance who are not truants. I am satisfied that during school hours a person's appearance reflecting an age of 16 or 17 without more does not furnish a reasonable suspicion of truancy.

The trial court observing James determined that it was unreasonable to conclude that he was under the age

of 16 and that the police officers did not have a reasonable suspicion that he was a truant. The court held that the detention was unlawful, and we should affirm the court order granting the motion to suppress.

One further point requires discussion. Although the majority appear to recognize that the trial court could reasonably determine that the officers detained James when they stopped him, they also suggest that the trial court could have found that there was no detention until later. The only issue properly before us is whether the trial court could properly find that the stop was a detention, and we should not reach out to determine whether the trial court could properly make a contrary finding.

Moreover, I believe that under the applicable test the facts compel a finding that a detention rather than a consensual encounter occurred when the officers stopped James. A detention occurs " 'only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' " (*Wilson v. Superior Court, supra,* 34 Cal.3d 777, 790.) The officers drove by James and then made a U-turn pulling up in front of him as he walked along an apparently otherwise deserted sidewalk. The officers got out of their squad car as he walked up to them. According to the officers, they stopped him, they stood to his left and right and commenced asking questions as to indemnity, his residence, where he was coming from, and his destination. According to James, the officers first asked if they could talk with him, and he wanted to be cooperative. After a few questions, the officers searched him. In discussing whether there was a detention the judge focused on this

evidence, including the unambiguous statements of the officers that they stopped him. In the circumstances I do not believe that many people would have felt free to leave without answering the officers' questions. The trial court's order should be affirmed.

BROUSSARD, J.

APPENDIX B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT DIVISION THREE

In re JAMES D., a Person Coming Under the Juvenile Court Law.	G000443 (Super. Ct. No. J-1184202)
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v. JAMES D., a minor, Defendant and Respondent.	OPINION (Filed Dec. 27, 1984)

Appeal from a judgment of the Superior Court of Orange County, James G. Merwin, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Cecil Hicks, District Attorney, County of Orange, Michael R. Capizzi, Assistant District Attorney, William W. Bedsworth and J. Phillip Ashey, Deputy District Attorneys, for Plaintiff and Appellant.

Ronald Y. Butler, Public Defender, County of Orange, Frank Scanlon, Assistant Public Defender, James Dean Allen and Donald J. Ayoob, Deputy Public Defenders, for Defendant and Respondent.

• • •

A sidewalk detention for suspicion of truancy led to a search of James D. He was found in possession of LSD, and a juvenile court proceeding was brought (Welf. & Inst. Code, § 602; Health & Saf. Code, § 11377). The district attorney appeals from the dismissal of the petition (Welf. & Inst. Code, § 800) after the minor's motion to suppress the contraband was granted (Welf. & Inst. Code, § 700.1). We find no legal basis for truancy detentions on probable cause, much less on mere suspicion, and consequently affirm (Ed. Code, § 48200, et seq.).

I

Newport Beach police officers Jacobs and Natale observed a young man walking on a sidewalk at 10:30 a.m. on February 28, 1983, a school day. The closest school was three to four miles away. They believed the youth, who was carrying a book bag, to be fifteen to sixteen years of age, and drove up to him in order to determine whether he was truant.

The officers alighted from their patrol car and approached the minor. They asked his name, whether he had any identification, where he was coming from, and where he was going. He was cooperative in answering their questions, but had no identification. He said he was coming from a friend's house, but could not remember his last name. He said he was walking to a bus stop and on his way home to Fullerton.

He appeared extremely nervous and agitated and, according to the officers, suddenly moved his right hand into the left side of his jacket. After they told him to slowly remove his hand, they patted down his outer cloth-

ing and felt a hard object about four to six inches long in the upper left chest area. Jacobs tried to retrieve it, but James D. grabbed the officer's wrist. Jacobs and Natale then restrained the minor and removed the object, which turned out to be a brush. It fell to the ground along with cigarettes, some papers, and an envelope. The envelope's flap was open, exposing a piece of paper coated with little green dots. Both officers recognized the dots as LSD in blotter form.

James D. denied being nervous or making any sudden movement. He testified the officers asked him about a bulge in his coat pocket and simply handcuffed and searched him when he told them what it was. He also denied the flap on the envelope was open.

II

Our concurring colleague suggests this detention was impermissibly prolonged under the rules governing detentions for suspected criminal behavior. This may be true, but James was not detained on suspicion of criminal activity. (Cf., *In re Tony C.* (1978) 21 Cal.3d 888, 897 and *In re Jorge S.* (1977) 74 Cal.App.3d 852, 857, where those rules *were* held applicable to investigations of juveniles for criminal activity who were also, incidently, apparent truants.) According to the officers here, they acted only to investigate garden variety truancy, misbehavior which has been—for want of a more apt description—decriminalized in this state. (Welf. & Inst. Code, § 601.1; Ed. Code, §§ 48262-48264; *In re Gerald B.* (1980) 105 Cal.App.3d 119, 124; *In re Ronald S.* (1977) 69 Cal.App.3d 866, 871.) For this reason, recent federal cases which appear to ex-

pand police powers to detain for suspected *criminal* activity are simply inapplicable. (See, e.g., *Florida v. Royer* (1983) 460 U.S. 491, 498-499.)

Fourth Amendment analysis must be employed to examine detentions where "the officer suspects [the detainee] may be personally involved in some criminal activity . . . . But similar safeguards are not required if the officer acts for *other proper reasons.* Such reasons are obviously too many and varied to recite, but they may be grouped in at least two general categories: (1) the officer may wish to question the person not as a suspect but merely as a witness to a crime, or (2) the officer may be engaged in one of 'those innumerable miscellaneous tasks which society calls upon police to do which have nothing to do with the detection of crime' (*Batts v. Superior Court* (1972) [ ] 23 Cal.App.3d 435, 438), such as giving aid to persons in distress, mediating domestic quarrels, assisting the elderly or the disabled, furnishing traffic advice or directions, and generally preserving the peace and protecting persons from harm or annoyance. [Citation.]" (*In re Tony C., supra,* 21 Cal.3d 888, 895-896, fn. omitted, emphasis added.) The descriptive examples in *Tony C.* and *Batts* which permit officers to approach persons not suspected of crime share similar characteristics: They are benign interventions designed to *assist* those contacted and are motivated by no overriding law enforcement purpose.

Thus, the questions we must examine are whether truancy stops based on mere suspicion or even probable cause permissibly fit into the mixed bag of "proper reasons" or "innumerable miscellaneous tasks" police of-

ficers are authorized and expected to perform recognized in *Tony C.* and *Batts,* and, if not, whether they can be justified on some statutory ground perhaps. Since the answer to each is, "No," the detention was unlawful and the judgment must be affirmed for that reason, not because it was impermissibly prolonged under rules applicable in criminal cases.

This detention was admittedly rooted in a law enforcement objective: the truancy statute. The minor was not a witness to a crime, in distress, involved in a domestic quarrel, elderly, disabled, a traffic problem, or in need of protection. And to the extent he sought to have his peace "preserved," the officers accomplished the opposite. It is one thing to stop an unattended child of tender years for the benefit of his or her welfare and safety, but quite another to execute an otherwise unwarranted intrusion into the life of a person of youthful appearance simply because school happens to be in session.

This minor was not a wandering toddler, but a seventeen-year-old college student. Detention of him on mere suspicion of truancy can hardly be viewed as a benign intrusion for his benefit, as opposed to a law enforcing activity. Society may have a strong interest in universal education, which, we suppose, an individual juvenile shares in the abstract. But as a practical matter, Newport Beach police do not routinely offer taxi service to children *desiring* a lift to school. Direct intervention of police power for the purpose of returning truants to the classroom serves public purposes—not the convenience of the minors affected. (Cf., *People v. Bellomo* (1984) 157 Cal.App.3d 193 [approving car stop of motorist who appeared to have

physical or mental problem] and *State v. Morris* (1982) 56 Or.App. 97 [641 P.2d 77] [suspected curfew violation, although not criminal, justified stop for best interest of juvenile].)

Consequently, we believe there is no place on the *Tony C.-Batts* shopping list detentions based on suspicion of truancy. This conclusion is strongly suggested in *Tony C.* itself. There, the detaining officer testified he stopped the minors because they were of school age and " 'juveniles do commit crimes when they're supposed to be in school and they're not.' " (*In re Tony C., supra,* 21 Cal. 3d at p. 896.) The Supreme Court was unimpressed: "There is nothing suspicious in the sight of two school children walking along the sidewalk during the noon hour: they may be going home for lunch, or on their way to a store, a playground, or a friend's house. Even if the encounter had taken place during the variety of present-day school hours, that fact would have had no sinister significance: it is not reasonable to suspect, as did Officer Joy, that any minor who is proceeding along a public street during school hours is ipso facto bent on committing crimes. Such speculation ignores the many circumstances in which a student may properly be away from school premises during classroom hours—e.g., on an errand for a school official, going to a doctor's or dentist's appointment, in transit to an athletic event, or returning home because of injury or illness." (*Id.*, at p. 897.) Applying the Supreme Court's *Tony C.* dictum to our facts, the officers obviously lacked any reasonable cause for initiating this detention.

Moreover, our review of the law discloses no statutory basis for truancy detentions *even with probable cause.* Sec-

tion 48264 of the Education Code provides: "The attendance supervisor, a peace officer, or any school administrator or his designee, may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his home and who is absent from school without valid excuse within the county, city, or city and county, or school district." Nothing in this statute authorizes arrests on probable cause or detentions on rational suspicion. The phrase "temporary custody" cannot be so read because it is obviously synonymous with "arrest" in the statute; either requires transportation of the minor to a school, parent, or nonsecure youth service or community center—far greater movement of the individual than is permissible in an ordinary criminal detention. (See, e.g., *People v. Harris* (1975) 15 Cal.3d 384, cert. den., *sub nom., California v. Harris* (1976) 425 U.S. 934.)

The omission of a grant of authority to arrest truants on probable cause in the Education Code is of great significance because the power to arrest on probable cause is a creature of statute. Section 836 of the Penal Code permits police to arrest for *criminal* activity on probable cause; but, by contrast, the power to arrest on probable cause is only given to citizens in cases where a felony has actually been committed (Pen. Code, § 837, subd. 3). All other private arrests are at the peril of the arresting party; for none is authorized unless the accused has actually committed a public offense. (Pen. Code, § 837, subds. 1 and 2.)

We are aware of but one area where the Legislature has conferred the power to detain or arrest on probable

cause for noncriminal activity: When there is reasonable cause to believe a person is a danger to him or herself or others as the result of a mental disorder. Welfare and Institutions Code section 5150 authorizes a police officer to take custody of and deliver the individual to a mental hospital for a period of observation not to exceed 72 hours. (*People v. Triplett* (1983) 144 Cal.App.3d 283; *Whaley v. Jansen* (1962) 208 Cal.App.2d 222.)

California has long recognized the difference between detentions on suspicion and arrests on probable cause for purposes of Fourth Amendment analysis (*People v. Mickelson* (1963) 59 Cal.2d 448, 450), but they are not different animals. The former are the judicially created offspring of the latter. Case law has expanded the probable cause concept to permit police detentions on reasonable suspicion that a "crime has taken place or is occurring or about to occur." (*In re Tony C., supra,* 21 Cal.3d at p. 893.) Authorized private citizen detentions, on the other hand, are far rarer creatures in the case law. (See, e.g., *In re Donaldson* (1969) 269 Cal.App.2d 509, 511-512; cf., *Gordon J., Jr. v. Santa Ana Unified School District* (Dec. 10, 1984, G000283)— Cal.App.3d —.) They are no more common in the statutes. (But see, e.g., Pen. Code, § 490.5, subd. (f)(1), which permits detentions of suspected shoplifters on probable cause by merchants and librarians.)

The pointed omission to authorize arrests for truancy on probable cause in the Education Code and the decriminalization of truancy in the Welfare and Institutions Code leave little justification for judicial recognition of a concomitant power to detain a person of youthful appearance during school hours on mere suspicion. In other

words, there is no longer any lawful basis for a police detention for truancy on other than actual knowledge of a student's truant status before the encounter—if ever there was. We are aware that *In re Miguel G.* (1980) 111 Cal. App.3d 345 approved a school hours detention where other juveniles riding in a police car informed the officers Miguel G. attended their school, although the officers did not know whether he might possess a lawful excuse, on the theory "that the failure to ask the minor if he has a 'valid excuse' for not being in school does not defeat probable cause to 'arrest' as that term is used in section 48264. Instead it is akin to an affirmative defense which the minor must assert to the officer . . . ." (*Id.*, at p. 349.)

However, we respectfully disagree with the implication of *Miguel G.* that mere knowledge of a student's status as such empowers an officer to arrest unless a valid excuse is produced. We perceive no legal basis to stop a minor at all under those circumstances. To the contrary, *In re Tony C., supra,* rehearses a number of lawful reasons a high school student might have for being away from campus during school hours and finds no basis to detain simply because a person who appears to be a student is not in school. (21 Cal.3d at p. 897, quoted ante, slip opn. p. 7.)

Our concurring colleague is alarmed that in larger cities officers will not know who are truants and who are not. We do not share her concern. If a school desires police help in locating truants, it may report the names and descriptions of students absent without excuse; and officers can pursue them as they would any other fugitive from justice with whom they are not personally acquainted. If a school or district does not seek police assistance and

is content to deal with ordinary truancy on campus, police simply have no legitimate role to play. The appropriate role of law enforcement is to protect persons of youthful appearance on the streets, as all other persons, not to drive them off under a pseudo concern for their educational progress.

Moreover, given the current statutory scheme, police interference in the daily lives of nonstudents of youthful appearance in order that a few truants may be chauffeured back to campus can hardly be justified. Indeed, the Legislature may well wish to consider deleting peace officers from Education Code section 48264 entirely, in order to more clearly conform the section to this state's current approach to enforcement of the compulsory education law.

Judgment affirmed.

CROSBY, J.

I CONCUR: TROTTER, P.J.

SONENSHINE, J., concurring.

I agree the contraband should be suppressed and concur in that result. However, I do not agree in the reasoning of the majority.

The People challenge the trial court's finding the officers were unjustified in detaining respondent.[1] How-

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[1] Because I find the initial detention legal I do not address the People's other contention. They also argue the encounter with the officers was consensual because respondent was approached in a public place and was never accosted nor ordered to answer their questions. They argue because his liberty was not restrained he was under no compulsion to interact with the officers and therefore the discussion was consensual.

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ever, the People fail to distinguish between the initial temporary detention and respondent's *continued* detention. By so doing, they fail to recognize important distinctions between a detention for investigation of criminal activity and a detention for truancy.

The People are correct when they argue the police "had more than articulable suspicion to justify an investigative detention." The court in *In re Miguel G.* (1980) 111 Cal.App.3d 345 found temporary detention for truancy[2] appropriate when the "officers saw appellant, who was one day shy of being 17 years of age, walking down an alley about 10 blocks from school at a time when school was in session." (*Id.*, at p. 350.) Respondent argues *In re Miguel G.* is distinguishable because "[o]ther minors were in the police car and when one of them saw appellant he stated, 'He goes to Jefferson High School also.' " (*Id.*, at p. 347.)

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I note, however, the trial court found the officers' testimony "in essence" amounted to an admission they "stopped" him and then "he agreed to cooperate, or kind of conceded to or acceded to that detention." In any event, I would defer to the trial court's conclusion a detention occurred. (See *People v. King* (1977) 72 Cal.App.3d 346.) Under the same circumstances presented to James D., a reasonable person would have believed he or she was not free to leave. (See *People v. Spicer* (1984) 157 Cal.App.3d 213.)

Further, the People's reliance on *Florida v. Royer* (1983) 460 U.S. 491 and *Wilson v. Superior Court* (1983) 34 Cal.3d 777 appears misplaced. Those cases deal with consents to search, and the courts in both cases suppressed the evidence because of unconstitutional detentions.

[2] Section 48264 of the Education Code provides a peace officer may arrest or assume temporary custody of a minor subject to full time education who is absent from school without a valid excuse.

I fail to find any compelling difference here when the officers observed respondent on a school day, during school hours, three to four miles from a school. He appeared to be of compulsory school age. A detention to investigate for truancy was proper.

I am not convinced as is the majority that there is "no statutory basis for truancy detentions *even with probable cause.*" The Legislature has formulated a whole statutory scheme dedicated to compulsory education. It is simply absurd to read any part of the code to eliminate any meaningful enforcement. "A practical construction is preferred to one that is technical and is required when the other would lead to mischief or absurdity. [Citation.]" *Cory v. Poway Unified School Dist.* (1983) 147 Cal.App. 3d 1158, 1168.)

The majority, by holding "there is no longer any lawful basis for a police detention for truancy on other than actual knowledge of a student's truant status before the encounter" is really saying the officer must *know* the student and *know* he or she is truant.[3] And absent that knowledge, no detention is permissible. Given the size of most school and police districts, these requirements equate to an impossibility of ever effectively enforcing compulsory education.[4]

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[3] The majority does hint a stop may be appropriate if the minor is sufficiently youthful, but fails to suggest a practical line of demarcation.

[4] The days of "Aunt Bee" and "Mayberry RFD" are long gone and have been replaced with Cagney & Lacey and Charlie's Angels.

Captain Furillo may know the gang leaders in his precinct, but the average cop on patrol is not familiar with the local students.

Therefore, I find the detention lawful. But, as in *People v. McGaughran* (1979) 25 Cal.3d 577, "it will be helpful to narrow the scope of the problem by noting what is *not* involved in this case. First, in contrast to such cases as *Delaware v. Prouse* (1979) 440 U.S. 648, and *In re Tony C.* (1978) 21 Cal.3d 888, the issue here is not whether [the officer] lawfully stopped defendant for the purpose of investigating criminal activity. . . . The question, instead, is whether the period of time during which [the officers] thereafter . . ." concluded the investigation was a lawful detention. (*Id.*, at p. 582.)

"The 'arrest' that takes place under section 48264 is a severely limited type of arrest and may not be used as a pretext for investigating criminal matters. (*In re Jorge S.*(1977) 74 Cal.App.3d 852.)[5] The arrest is for one pur-

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[5] The limited arrest power at issue here is analogous to the power bestowed upon a peace officer when a vehicle stop is effected to issue a citation for a traffic infraction. "Vehicle Code section 40504, subdivision (a), commands that when a traffic offender such as defendant herein gives his written promise to appear by signing two copies of the citation, 'Thereupon the arresting officer shall *forthwith* release the person arrested from custody.' (Italics added.) The statute leaves no room for interpretation: it plainly and unequivocally provides that when the officer has completed his duties flowing from the violation, no further detention—whether for a warrant check or otherwise—is permissible: the motorist must then be released 'forthwith.'" (*People v. McGaughran, supra,* 25 Cal.3d 577, 586.) But an *arrest,* limited or not, is a deprivation of liberty which invokes Fourth Amendment principles, whatever the *purpose* of the arrest power which is bestowed. Thus *McGaughran* discusses the permissible length of a detention to issue a traffic citation. And the fact the arrest here is related to the enforcement of the truancy law rather than a criminal law does not mean Fourth Amendment considerations are not implicated. (See *Camara v. Municipal Court* (1967) 387 U.S. 523.)

pose only: to place the minors in a school setting as quickly as possible." (*In re Miguel G., supra,* 111 Cal.App.3d 345, 349.) Here the officers failed to pursue that goal.

Both officers testified they could not remember asking respondent where he went to school and the police report does not include any questions (or answers) regarding James D.'s age or school. Further, Officer Natale did not recall respondent ever being told he was being detained for truancy. James D. testified the officers did not ask his age or school, nor did they advise him of the reason for stopping him. Under the mandate of *People v. McGaughran, supra,* 25 Cal.3d 577, I find the continued detention impermissible because the "investigatory detention exceed[ed] constitutional bounds when [it] extended beyond what [was] reasonably necessary under the circumstances which made its initiation permissible." (*Willett v. Superior Court* (1969) 2 Cal.App.3d 555, 559.)

Once the police stopped James D., all that was reasonably necessary was to ask enough relevant questions to determine if he was a truant.[6] The officers cannot detain a possible truant and then fail to ask questions relevant to determine truancy. As in *McGaughran,* the officers were justified in the initial detention but the continuing detention exceeded constitutional limitations.[7] Put another

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[6] Had that been done, they would have found respondent was a college student and in fact not a truant.

[7] *People v. Harness* (1983) 139 Cal.App.3d 226, which upheld a detention prolonged to complete a field identification card, is distinguishable. The court affirmed the ruling of the trial court that it was appropriate to complete a so-called "F.I." card dur-

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way, it is consistent with the purposes of the compulsory education law, and its truancy provisions, to give peace officers latitude in detaining suspected truants to determine if they belong in school. But, in order to prevent the compulsory education law from giving peace officers carte blanche to detain juveniles during school hours, any detention based upon truancy *must* be closely circumscribed to serve only the purpose of the law which creates the power to detain in the first place. The officers in the present case failed to pursue that purpose expeditiously.

As a result, James D. was unlawfully detained when the LSD was discovered. I am not unmindful "a significant number of assassinations of officers occur when they are engaged in making routine traffic stops and investigations [citation]." (*People v. Hill* (1974) 12 Cal.3d 731, 745 overruled on other grounds in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896, fn. 5 and *DeLancie v. Superior Court* (1982) 31 Cal.3d 865; see *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37.) Had James D. suddenly reached inside his jacket at the onset of the detention, before the officers had an opportunity to determine if he was truant, they could have legitimately taken measures to protect themselves. Under either version of the events, the contraband was removed from James as a result of purportedly protective actions by the police officers during the unduly prolonged detention. Thus the evidence which was sup-

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ing an investigation shortly after an attempted kidnapping. In *Harness* the purpose for the detention was proper *and* it was pursued expeditiously. Here, by contrast, a very limited *non-criminal* detention was initiated but its legitimate purpose not pursued.

pressed was "come at by exploitation of [the] illegality," to wit, the illegal detention. (See *People v. Leib* (1976) 16 Cal.3d 869, 877.) The juvenile court properly suppressed the contraband and dismissed the petition.

/s/ Sonenshine, J.

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

1. The Fourth Amendment to the United States Constitution provides in relevant part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

2. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

3. California Education Code section 48200 provides in pertinent part:

> "§ 48200. Children between ages of 6 and 16 years
>
> Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) of this part shall attend the public full-time day school or continuation school or classes for the full time designated as the length of the schoolday. . ."

4. California Education Code section 48220 provides:

"§ 48220. Classes of children exempted

The classes of children described in this article, shall be exempted by the proper school authorities from the requirements of attendance upon a public full-time day school."

5. California Education Code section 48221 provides:

"§ 48221. Physical or mental condition

Children whose physical or mental condition is such as to prevent, or render inadvisable attendance at school or application to study shall be exempted, and the governing board of the school district shall require satisfactory evidence of the condition to be furnished."

6. California Education Code section 48222 provides in pertinent part:

"§§ 248222. Attendance in private school

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. . . ."

7. California Education Code section 48223 provides in pertinent part:

"§ 48223. Certain mentally gifted children

Children who are mentally gifted and who are being instructed in a private full-time day school by persons capable of teaching, where all or part of the courses of instruction required to be taught in the public schools of this state is taught in a foreign language with not less than 50 percent of the total daily instructional time taught in the English, shall be exempted. . . ."

8. California Education Code section 48224 provides in pertinent part:

"§ 48224. Instruction by tutor

Children not attending a private, full-time, day school and who are being instructed in study and recitation for at least three hours a day for 175 days each calendar year by a private tutor or other person in the several branches of study required to be taught in the public schools of this state and in the English language shall be exempted. . . ."

9. California Education Code section 48226 provides in pertinent part:

"§ 48226. Blind or deaf children

Any child who is blind or deaf or partially blind or deaf to an extent which renders him incapable of receiving instruction in the regular elementary or secondary schools, but whose mental condition is such as to permit application to study shall be exempted. . . ."

10. California Education Code section 48227 provides:

"§ 48227. Vocational courses

Upon the recommendation of the principal of the school which any minor over the age of 14 years is attending and has been attending during the next preceding school year, the supervisor of attendance, or, if there is no supervisor of attendance, the superintendent of schools having jurisdiction over the place of the school attendance may assign the minor to a vocational course in a place of employment. The employment shall be in lieu of the regular school course which the minor is pursuing."

11. California Education Code section 48230 provides:

"§ 48230. Compulsory part-time classes

Children who hold permits to work shall be exempted, but such children shall be subject to compulsory attendance upon part-time classes."

12. California Education Code section 48231 provides:

"§ 48231. Entrance into attendance area within ten schooldays of end of school term

Notwithstanding Section 48201, pupils between 12 and 18 years of age who enter an attendance area from another state within 10 schooldays before the end of the school term during which such entrance occurs are exempt for the remainder of the school term."

13. California Education Code section 48260 provides:

"§ 48260. Definition

Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse more than three days or tardy in excess of 30 minutes on each of more than three days in one school year is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district."

14. California Education Code section 48264 provides:

"§ 48264. Arrest of truants

The attendance supervisor, a peace officer, or any school administrator or his designee, may arrest or assume temporary custody, during school hours, of

any minor subject to compulsory full-time education or to compulsory continuation education found away from his home and who is absent from school without valid excuse within the county, city, or city and county, or school district."

15. California Education Code section 48265 provides in pertinent part:

"§ 48265. Delivery of truant

Any person arresting or assuming temporary custody of a minor pursuant to Section 48264 shall forthwith deliver the minor either to the parent, guardian, or other person having control, or charge of the minor, or to the school from which the minor is absent, or to a non-secure youth service or community center designated by the school or district for counseling prior to returning such minor to his home or school, or to a school counselor or pupil services and attendance officer located at a police station for the purpose of obtaining immediate counseling from the counselor or officer prior to returning or being returned to his home or school. . . ."

16. California Education Code section 48400 provides:

"§ 48400. Weekly minimum attendance requirement

All persons 16 years of age or older and under 18 years of age, not otherwise exempted by this chapter, shall attend upon special continuation education classes maintained by the governing board of the high school district in which they reside, or by the governing board of a neighboring high school district, for not less than four 60-minute hours per week for the regularly established annual school term. Such minimum attendance requirement of four 60-minute hours per week may be satisfied by any combination of attend-

ance upon special continuation education classes and regional occupational centers or programs."

17. California Education Code section 48402 provides:

"§ 48402. Minors not regularly employed.

Whenever a minor subject to the provisions of this chapter, who is not otherwise exempted by this chapter, cannot give satisfactory proof of regular employment he shall attend, for not less than 15 hours per week, special continuation education classes during the period of unemployment. The minimum attendance requirement of 15 hours per week may be satisfied by any combination of attendance upon special continuation education classes and regional occupational centers or programs."

18. California Education Code section 48410 provides:

"§ 48410. Persons exempted from continuation classes

There are exempted from compulsory attendance in continuing education classes as otherwise required by Sections 48400 and 48402, persons who:

(a) Have been graduated from a high school maintaining a four-year course above the eighth grade of the elementary schools, or who have had an equal amount of education in a private school or by private tuition.

(b) Are in attendance upon a public or private full-time day school, or satisfactory part-time classes maintained by other agencies.

(c) Are disqualified for attendance upon these classes because of their physical or mental condition, or because of personal services that must be rendered to their dependents.

(d) Are satisfactorily attending a regional occupational program or center as provided in Section 48432.

(e) Have successfully demonstrated proficiency equal to or greater than standards as established by the Department of Education pursuant to Section 48412, and have verified approval submitted by their parent or guardian.

(f) Are subject to Section 48400 but not Section 48402 and are in attendance upon classes for adults for not less than four clock hours per calendar week.

(g) Are exempt from compulsory school attendance under Section 48231.

19. California Education Code section 48412 provides in pertinent part:

"§ 48412. Certificate of proficiency; examination fees

(a) Any person 16 years of age or older, or who has been enrolled in the 10th grade for one academic year or longer, or who will complete one academic year of enrollment in the 10th grade at the end of the semester during which the next regular examination will be conducted, shall be permitted to have his or her proficiency in basic skills taught in public high schools verified according to criteria established by the State Department of Education.

The State Board of Education shall award a 'certificate of proficiency' to persons who demonstrate that proficiency. The certificate of proficiency shall be equivalent to a high school diploma, and the State Department of Education shall keep a permanent record of the issuance of all the certificates. . . ."

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No. 87-930

In The
Supreme Court of the United States
October Term, 1987

JAMES D.,
Petitioner,

vs.

STATE OF CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari To the Supreme Court of The State of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1.

Whether a truancy detention based on reasonable suspicion and articulable facts constitutes an unreasonable search or seizure under the Fourth Amendment?

2.

Whether a truancy detention based on reasonable suspicion and articulable facts violates the due process clause of the Fourteenth Amendment?

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the California Supreme Court is published as *In re James D.*, 43 Cal.3d 903 (1987) and is reprinted in Petitioner's Appendix A. The opinion of the California District Court of Appeal was originally published at 164 Cal.App.3d 515 (1984) and is reprinted in Petitioner's Appendix B.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the Fourth and Fourteenth Amendments to the United States Constitution and the statutory scheme of compulsory education set forth in the California Education Code are adequately set forth in Petitioner's Appendix C, with the exception of Education Code section 48205, which in pertinent part provides:

> [A] pupil shall be excused from school for justifiable personal reasons, including, but not limited to, an appearance in court, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, or an employment conference, when the pupil's absence has been requested in writing by the parent or guardian and approved by the principal or a designated representative. . . .

STATEMENT OF THE CASE

On May 4, 1983, Respondent, the People of the State of California, charged Petitioner, in Juvenile Court, with violating California Health and Safety Code section 11377, possession of LSD.

At a subsequent juvenile court jurisdictional hearing Petitioner moved to suppress the LSD. He claimed that

the seizure of the LSD was the product of an unlawful detention.

Testimony presented at the suppression hearing established that at 10:30 a.m., February 28, 1983, two officers of the Newport Beach Police Department were on routine patrol near the ocean. They noticed Petitioner walking on a sidewalk over a bridge. Petitioner was carrying a book bag. He appeared to be 15 or 16 years old. School was in session and Petitioner was three miles from the nearest high school. Suspecting Petitioner might be truant, the officers decided to ask him why he was not in school. The officers drove to where Petitioner was walking and stopped their car. As Petitioner approached, the officers stepped out of their car, and asked if they could talk with Petitioner. Petitioner said "Sure," and walked over to the police. The officers asked Petitioner if he had any identification. Petitioner said he had none. When asked where he was coming from, Petitioner said he had come from a friend's house. However, he could not remember the friend's name or point out the house. Petitioner became nervous and suddenly reached inside his jacket. The officers patted down the jacket for weapons and felt a hard object. When they attempted to remove the object, Petitioner resisted. Ultimately, a hairbrush fell out of the jacket along with a piece of paper containing dots of LSD. Petitioner was placed under arrest. (*In re James D.*, 43 Cal.3d 903, 908 (1987).)

At the conclusion of the suppression hearing, Petitioner argued that since he was a 17-year-old high school graduate, he was not subject to compulsory education laws. Thus, the officers were not empowered to detain him, and

the discovery of the LSD violated his Fourth Amendment rights against unreasonable searches and seizures. (*In re James D., supra,* 43 Cal.3d at 908.)

Respondent argued at the suppression hearing that the interaction between Petitioner and the police was not a detention or seizure but a mere contact or consensual encounter. Alternatively, if a detention occurred, it was lawful. In either case the discovery of the LSD was proper. (*In re James D., supra,* 43 Cal.3d at 909.)

The juvenile court suppressed the evidence. The court concluded that the interaction constituted a detention. Believing that state compulsory education laws did not apply to those over 16 years old, the court concluded that the police did not have a reasonable suspicion that the Petitioner was a truant. Consequently, the trial court suppressed the LSD and dismissed the case. (*In re James D., supra,* 43 Cal.3d at 908-911, 913, 918.)

Respondent appealed the juvenile court ruling. The California District Court of Appeal affirmed the suppression order. In addition, the appellate court held that truancy detentions require more than reasonable suspicion or even probable cause; they require an "actual knowledge of the student's truant status before any encounter." (*In re James D.,* 164 Cal.App.3d 515, 517, 521 (1984).)

Respondent appealed again, this time to the California Supreme Court. The California Supreme Court reversed both lower courts and remanded the case to juvenile court. First, since the juvenile court had assumed the interaction between the police and Petitioner was a detention, it never considered whether the interaction was a consensual encounter. The juvenile court was ordered to consider and

resolve that issue. Second, since it erroneously assumed 17-year-olds were exempt from compulsory education, the juvenile court never decided whether the truancy detention was based upon reasonable suspicion supported by articulable facts. Hence, the juvenile court was ordered to resolve that issue. (*In re James D., supra,* 43 Cal.3d at 918.)

REASONS FOR DENYING THE WRIT

Certiorari should be denied because the holdings of the California Supreme Court in *In re James D.,* 43 Cal.3d 903 (1987) were based upon and are consistent with the Fourth and Fourteenth Amendments to the United States Constitution as well as precedents established by the United States Supreme Court.

First, the California Supreme Court held that the Fourth Amendment is not triggered if an interaction between a government official and a suspect amounts only to a "consensual encounter" rather than a "seizure." (*In re James D., supra,* 43 Cal.3d at 911-913.) This holding is consistent with *Florida v. Royer,* 460 U.S. 491, 497-499 (1983), *United States v. Mendenhall,* 446 U.S. 544, 554 (1980), and *INS v. Delgado,* 466 U.S. 210, 215-217 (1984).

Second, the California Supreme Court held that a truancy detention is justified "when there are specific articulable facts causing an officer to suspect, reasonably, that a truancy violation is occurring, and that the person he intends to detain is a truant." (*In re James D., supra,* 43 Cal.3d at 913-917.) This holding is consistent with the Fourth and Fourteenth Amendments and with *Brown v.*

Texas, 443 U.S. 47, 50-51 (1979) and *United States v. Brignoni-Ponce,* 422 U.S. 873, 881-882 (1975).

Finally, the theoretical foundations underlying these holdings were based on federal precedent and the California Supreme Court's interpretation of California statutes.

ARGUMENT

1.

TRUANCY DETENTIONS BASED ON REASONABLE SUSPICION AND ARTICULABLE FACTS ARE NOT PROHIBITED BY THE FOURTH AMENDMENT.

The highest priority of society is the education of its children. Education ranks at "the very apex of the function of a State." (*Wisconsin v. Yoder,* 406 U.S. 205, 213 (1972).) Education is perhaps "the most important function of state and local governments." (*Brown v. Board of Education,* 347 U.S. 483, 493 (1954).)

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. (*Brown v. Board of Education, supra,* 347 U.S. at 493.)

Like every other state, California has made school attendance compulsory. (*Serrano v. Priest,* 5 Cal.3d

584, 604-610 (1971).) To enforce compulsory education in California, the state legislature has given both school officials and peace officers the power to "arrest" truants. Section 48264 of the State Education Code provides:

> The attendance supervisor, a peace officer, or any school administrator or his designee, may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his home and who is absent from school without valid excuse. . . .

Importantly, a truancy "arrest" is very limited in scope and is significantly different from a typical criminal arrest. Unlike a criminal arrest, the arresting officer of a truant "shall" deliver the truant "forthwith" to his home, his school, or a guidance counselor. (Education Code § 48265.) Minors "arrested" for truancy are not transported to jail. They are not incarcerated. They are not booked. They are not fingerprinted and photographed. In short, they are not treated like criminals. "The sole purpose of a truancy 'arrest' is to return the absent student to school as expeditiously as possible." (*In re James D.*, 43 Cal.3d 903, 915 (1987).) Such an arrest "is a severely limited type of arrest and may not be used as a pretext for investigating criminal matters." (*In re Miguel G.*, 111 Cal.App.3d 345, 349 (1980); *In re Jorge S.*, 74 Cal.App.3d 852 (1977).) "The effect of a [truancy] arrest . . . is very different from the effect of a typical criminal arrest," primarily because with a truancy "arrest," "the emphasis is not on punishment, but on correction of truancy, i.e., to promote attendance in order that students may be educated." (*In re James D., supra*, 43 Cal.3d at 910.)

The power to arrest necessarily includes the preliminary and less intrusive power to detain. When the California legislature gave school officials and peace officers the power to "arrest" truants, it simultaneously and implicitly empowered them to temporarily detain suspected truants. Thus, under California law, peace officers and school officials may temporarily detain school age children, during school hours, for the limited purpose of ascertaining whether they are absent from school without valid excuse. (*In re James D., supra,* 43 Cal.3d at 909-911.) To hold otherwise would derail the mechanism designed to enforce compulsory education.

Truancy detentions are also valid under federal constitutional law. This was the precise issue addressed in the present case by the California Supreme Court.

The lower court reached two basic conclusions. First, the Fourth Amendment is not triggered if the interaction between an official and a minor amounts only to a "consensual encounter" rather than a "seizure." (*In re James D., supra,* 43 Cal.3d at 911-913.) Second, "a detention to investigate whether a person is a truant is justified when there are specific articulable facts causing an officer to suspect, reasonably, that a truancy violation is occurring, and that the person he intends to detain is a truant." (*In re James D., supra,* 43 Cal.3d at 913, 916-917.) These conclusions were based on and are consistent with precedents established by the United States Supreme Court. (*Florida v. Royer,* 460 U.S. 491, 497-498 (1983); *United States v. Mendenhall,* 446 U.S. 544, 554 (1980); *Brown v. Texas,* 443 U.S. 47, 50-51 (1979); *United States v. Brignoni-Ponce,* 422 U.S. 873, 881-882 (1975); *INS v. Delgado,* 466 U.S. 210, 215-217 (1984).)

Analyzing truancy detentions "in the abstract," the California Supreme Court balanced the relevant public and private interests.

> The federal test for determining whether a detention is justified involves a weighing of (i) the public interest served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty (e.g. *Brown v. Texas,* 443 U.S. 47, 50-51 (1979) and (ii) the officer's reasonable suspicion that a crime has occurred or is occurring. (*In re James D., supra,* 43 Cal.3d at 914; see also *United States v. Brignoni-Ponce, supra,* 422 U.S. at 881, and *New Jersey v. T.L.O.,* 469 U.S. 325, 337 (1985).)

The lower court concluded that the governmental interest in enforcing compulsory education is "substantial." (*In re James D., supra,* 43 Cal.3d at 915.) Other courts have classified the government's interest in the welfare and education of children as "compelling," "fundamental," and "transcendent." (*Wisconsin v. Yoder, supra,* 406 U.S. at 213-214; *Ginsburg v. New York,* 390 U.S. 629, 640 (1968); *Serrano v. Priest, supra,* 5 Cal.3d at 604-610.)

Furthermore, the lower court found that truancy detentions and arrests "substantially advance the public interest in enforcing the state's compulsory education laws." (*In re James D., supra,* 43 Cal.3d at 915.) In fact, truancy detentions are "the *only effective means* of identifying and locating truants." (*In re James D., supra,* 43 Cal.3d at 915.)

In contrast to the "substantial," "fundamental" and "compelling" interest in enforcing compulsory education, the California Supreme Court found the interference with personal liberty resulting from a truancy detention to be

"slight." (*In re James D., supra,* 43 Cal.3d at 915.) Truancy detentions are very limited. They are restricted to daylight hours when school is in session. They are applicable only to school age children. They are limited to ascertainnig whether a child is absent from school without valid excuse. They must be based on an articulable and reasonable suspicion. They cannot be used as a pretext to investigate more serious criminal activity. In fact, police have virtually no incentive to exploit truancy detentions. Since they do not involve "real crime," truancy detentions and arrests are not the sort of thing upon which promotions are based.

> Questioning must, of course, be strictly limited to the purpose of the stop. (Citations.) As explained above, the sole purpose of a truancy "arrest" is to return the absent student to school as expeditiously as possible. . . . [T]he sole purpose of a truancy *detention* is to investigate whether a particular person is a truant, and if he is in fact a truant, to place him under a § 48264 "arrest" in order to return him to school. (*In re James D., supra,* 43 Cal.3d at 915-916.)

The California Supreme Court concluded that the slight intrusion on a minor's liberty caused by a truancy detention does not outweigh the substantial governmental interest in enforcing compulsory education. "We are unwilling to conclude that the limited and brief intrusion required for such investigative detention outweighs the legitimate governmental interest here involved." (*In re James D., supra,* 43 Cal.3d at 916.) Accordingly, truancy detentions are not barred by the Fourth Amendment. Plus, police and children are not enemies. Detentions designed to further education will benefit children both in the short term and in the long run.

Obviously, the power to detain truants is not limitless. Each particular detention must be supported by "sufficient objective facts." (*In re James D., supra,* 43 Cal.3d at 916.) Consistent with the Fourth Amendment and federal precedent, the California Supreme Court held that truancy detentions must be based upon "specific and articulable facts" which create a "reasonable suspicion" of truancy. (*In re James D., supra,* 43 Cal.3d at 916.)

Whether a particular school official or peace officer has an articulable suspicion will depend on the totality of the circumstances. Each case will involve a different combination of innumerable and often unique factors.

However, one factor necessary to a lawful truancy detention is that school is in session. The fact that a detention took place at night or on a weekend would automatically render the official's suspicion unreasonable. Thus, one of the articulable facts necessary to a lawful truancy detention is that it take place during school hours.

Another key factor is the minor's age. Does he appear to be school age? If not, a truancy detention might not be justified.

Petitioner continues to complain that "youthful appearance is an inherently subjective factor and hence cannot serve as a basis for detention." (*In re James D., supra,* 43 Cal.3d at 916.) In rejecting this argument, the lower court found youthful appearance to be not only "highly relevant," but also "objectively verifiable." (*In re James D., supra,* 43 Cal.3d at 917.) "The judge at the suppression hearing should be able to determine, from looking at the defendant . . . whether the officer's estimation of age was reasonable." (*In re James D., supra,* 43 Cal.3d at 916.)

Consistent with the Fourth Amendment, police may stop a car driven by someone who appears to be too young to possess a driver's license. Consistent with the Fourth Amendment, an officer may detain a person who appears to be too young to possess or purchase alcohol. In short, youthful appearance is a factor which police legitimately rely on in initiating all sorts of investigative detentions. Thus, reliance on youthful appearance in detaining suspected truants is not prohibited by the Fourth Amendment.

Petitioner also argues that it is unreasonable to base truancy detentions on youthful appearance alone. We agree. So did the California Supreme Court. "[A] proper detention . . . cannot be based on youthful appearance alone." (*In re James D., supra,* 43 Cal.3d at 917.) "[Y]outhful appearance and nothing more would not justify a detention to investigate whether a person is a truant. . . ." (*In re James D., supra,* 43 Cal.3d at 917.) Youthful appearance is obviously only one of several factors school officials and peace officers consider in initiating truancy detentions. Another prime factor is whether school is in session at the time. Other relevant factors include the location of the minor, his direction of travel, his attire, and his activity. In the present case, Petitioner appeared to be school age. School was in session at the time. Petitioner was walking on a bridge near the ocean. He was at least three miles from the nearest school. He was carrying a book bag. (*In re James D., supra,* 43 Cal.3d at 917.) Again, the analysis by the California Supreme Court harmonizes with the Fourth Amendment.

Petitioner further contends that, before a truancy detention can be initiated, the official must have "actual

notice'' from the school that the child is absent. This ''actual notice,'' or reporting requirement, is inconsistent with the legislative history of compulsory education laws in California. The original statute which gave rise to Education Code § 48264 was enacted in 1903 and gave attendance officers the power to arrest children actually reported by the school to be truant. (Education Code § 16831, Stats. 1903, Ch.270, p.390, § 5.) In 1907, this statute was amended to authorize truancy arrests by peace officers. (Education Code § 16831, Stats. 1907, Ch.77, p.96, § 3.) The prerequisite that the officer receive a specific report of truancy before the arrest remained in the statute until 1974. In 1974, the reporting requirement was abolished. (Education Code § 12405, Stats. 1974, Ch.257, p.656, § 1.)

Petitioner's proposed reporting or ''actual notice'' requirement also ignores the practical realities of education in California. Approximately five million children in California are subject to compulsory education laws. (Appendix A.) The Los Angeles School District alone has about five hundred thousand students. (*In re James D., supra,* 43 Cal.3d at 915.) The daily number of absences in larger school districts reaches into the thousands. For schools to provide peace officers with the names and descriptions of these absentees would be impractical. No officer could possibly be expected to familiarize himself with the names and descriptions of the hundreds and thousands of youngsters who will be absent on any given day. ''[W]e find it 'ludicrous to assume that law enforcement and school officials would have the slightest chance intercepting those few students [actually] known by them to be truant.' '' (*In re James D., supra,* 43 Cal.3d at 915.)

As a practical matter, investigative detentions based on reasonable suspicion are "the *only effective means* of identifying and locating truants." (*In re James D., supra,* 43 Cal.3d at 915.)

Petitioner also disagrees with the California Supreme Court ruling that state compulsory education laws justify truancy detentions of children from age 6 to age 18. Since Petitioner was 17 at the inception of this case, he naturally argues that the cut-off line for truancy detentions should have been drawn at 16.

Authorizing truancy detentions of children ages 6-18 is based upon a reasonable interpretation of state statute.

> [T]he legislative scheme provides that unless *a person between the ages of 16 and 18* is (i) enrolled in a continuing education program, (ii) is a high school graduate or has passed the "proficiency examination," or (iii) qualifies under other miscellaneous exemptions, he "*must be enrolled in a compulsory full-time education program and must be in school during school hours or else he is subject to a section 48264 arrest.*" (*In re James D., supra,* 43 Cal.3d at 909-910, quoting *In re Miguel G., supra,* 111 Cal.App.3d at 349.)

Authorizing truancy detentions of those between 16 and 18 is statistically sound. During the 1985-1986 school year, the number of children ages 16-18 in California was 1,145,181. Only 56,629 or 5% of those were exempt from attending school. Hence, 19 out of 20 16-18 year olds in the state population are subject to compulsory education. Moreover, on a given day, 53,121 or 5% of the 16-18 year olds are enrolled in compulsory continuation education. The remaining 90% are subject to compulsory full time education. Therefore, about 9 out of 10 16-18 year olds in

the state are subject to full time compulsory education. Including 16 and 17 year olds in the age group of truancy detentions is reasonable. (Appendix B.) Thus, authorizing such detentions does not violate the Fourth Amendment.

In conclusion, a truancy detention based on reasonable suspicion and articulable facts does not constitute an unreasonable search or seizure under the Fourth Amendment. So long as they have an articulable reasonable suspicion, school officials and peace officers may temporarily detain school age children, during school hours, for the limited purpose of ascertaining whether they are absent from school without excuse.

2.

TRUANCY DETENTIONS BASED ON REASONABLE SUSPICION AND ARTICULABLE FACTS DO NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Petitioner contends that truancy detentions made pursuant to Education Code § 48264 are unconstitutional under the Fourteenth Amendment of the United States Constitution. He argues that suspected truants are denied due process because there are no guidelines governing such detentions. He is mistaken.

First, truancy detentions must be carried out within the confines of the Fourth Amendment. As previously discussed, such detentions must be based on a reasonable and articulable suspicion of truancy. This is a well-established standard familiar to cops and courts. The Fourth Amendment parameters of reasonable and articulable suspicion satisfy the requirements of due process.

Second, the California Education Code sets statutory standards and limitations for truancy arrests and detentions. Education Code § 48264 defines truancy as being "absent from school without valid excuse." Contrary to Petitioner's assertion, the Education Code also provides guidance as to what constitutes a valid excuse. Sections 48221, 48222, 48223, 48224, 48226, 48447, and 48410 list those who are exempt from compulsory education. (Petitioner's Appendix C.) Education Code § 48205 further defines what constitutes a valid excuse.

> . . . a pupil shall be excused from school for justifiable personal reasons, including, but not limited to, an appearance in court, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, or an employment conference, when the pupil's absence has been requested in writing by the parent or guardian and approved by the principal or a designated representative. . . .

Contrary to Petitioner's contentions, there are both constitutional and statutory standards governing truancy detentions made under Education Code § 48264. These standards satisfy the requirements of due process. Therefore, such truancy detentions do not violate the Fourteenth Amendment of the United States Constitution.

———o———

CONCLUSION

The decision of the California Supreme Court in the present case was based upon and is consistent with the constitutional requirements of both the Fourth and Fourteenth Amendments. Accordingly, and for all the above reasons, the Petition for Writ of Certiorari should be denied.

Dated: February 17, 1988.

Respectfully submitted,

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APPENDIX A*

COMPULSORY FULL-TIME

Number of students in public schools (1984-85)

Kindergarten and grades one through eight	2,800,296
Grades nine through twelve	1,278,447
Special classes	72,367
Total	4,151,110

Number of students in private schools (1984-85)

Kindergarten	60,795
Elementary school	356,468
High School	122,864
Total	540,127

COMPULSORY PART-TIME

Cumulative total at year end (1984-85)	101,021
Average enrollment (1984-85)	50,715

*At the request of the California Supreme Court, the California State Department of Education compiled these statistics and submitted them to the California Supreme Court on April 30, 1986.

APPENDIX B*

*At the request of the California Supreme Court, the California State Department of Education compiled the following statistics and submitted them to the California Supreme Court on July 22, 1987.

COMPULSORY CONTINUATION EDUCATION

		1983-1984		1984-1985		1985-1986	
	A. *Number of Age 16-18:*						
	• In California	1,183,591		1,141,562		1,145,181	
	• In Grades 10/11/12	903,604	(76.3%)	914,281	(80.1%)	937,029	(82.0%)
E.C. 48400	B. *Number Enrolled:*						
	• In Continuation Educ. (Cumulative)	99,645	(8.4%)	101,021	(8.8%)	104,175	(9.1%)
	• Are 16-18	88,186	(7.5%)	90,414	(7.9%)	94,695	(8.3%)
	• Under Age 16	11,459	(0.9%)	10,607	(0.9%)	9,480	(0.8%)
	• Single-day totals[1]			52,539		53,121	
	Note: The percentages that follow are based on the total cumulative enrollment in continuation education for each of the school years.						
	(1) Required Attendance:						
E.C. 48400	• Four Hours Per Week	5,280	(5.8%)	6,781	(6.7%)	7,307	(7.0%)
	(2) Required Attendance						
E.C. 48402	• Fifteen Hrs. Per Week	93,825	(94.2%)	94,240	(93.3%)	96,868	(93.0%)

[1]Single-day totals are not cumulative and indicate the approximate number of children actually enrolled in the continuation education program at a given time.

E.C. 48410	C. *Attendance Exemptions:*				
	-a	(1) Graduated or Equivalent	8,977 (9.0%)	9,285 (9.2%)	9,776 (9.4%)
	-b	(2) Public or Private School	11,359 (11.4%)	16,659 (16.5%)	14,435 (16.7%)
	-b	(3) Part-time/Other Agencies	5,274 (5.3%)	3,375 (3.3%)	3,749 (3.6%)
	-c	(4) Phys./Mental/ Dependents	830 (0.8%)	734 (0.75%)	708 (0.7%)
	-d	(5) Attend Reg. Occup. Center	213 (0.2%)	354 (0.4%)	505 (0.5%)
	-e	(6) Passed Proficiency Exam	888 (0.9%)	918 (0.9%)	850 (0.8%)
	-f	(7) Attend Adult Classes (4 hr.)	3,954 (4.0%)	4,151 (4.1%)	4,655 (4.5%)
	-g	(8) Arrival (10 days end term)	—	—	—
		(9) Other Legal Exemptions:			
—		• Deceased	52 (6.0%)	58 (0.6%)	62 (0.6%)
E.C. 48400		• Left at age 18	6,321 (6.3%)	5,136 (5.1%)	4,904 (4.7%)
E.C. 48400		• To Work Program— Age 18	2,152 (2.2%)	2,963 (2.9%)	2,488 (2.4%)

E.C. 48410b	• Enlisted in Military	168 (0.2%)	242 (2.9%)	255 (0.2%)
E.C. 48232	• Authorized Leave of Abs.	—	162 (0.1%)	120 (0.1%)
E.C. 48915	• Expulsion	511 (0.5%)	466 (0.5%)	420 (0.4%)
E.C. 48263	• Habitual Truant	3,828 (3.8%)	4,239 (4.2%)	3,578 (3.4%)
	D. *Required But Do not Attend:*			
	• Marriage	404 (0.4%)	338 (0.3%)	278 (0.3%)
	• Parent Request	481 (0.5%)	—	57 (0.05%)
	• Moved-Destination Unknown	7,207 (7.2%)	6,429 (6.4%)	6,819 (6.5%)
	C.-D. *TOTAL NUMBER AND PERCENTAGE*	52,619 (54.9%)	55,507 (54.9%)	56,629 (54.4%)

Supreme Court, U.S.
FILED
MAR 7 1988
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No. 87-930

In The

Supreme Court of the United States

October Term, 1987

JAMES D.,

Petitioner,

vs.

CALIFORNIA,

Respondent.

PETITIONER'S REPLY TO RESPONENT'S BRIEF IN OPPOSITION

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People v. Aldridge, 35 Cal.3d 473, 198 Cal. Rptr. 538 (1984) 6

U.S. CONSTITUTION

Fourth Amendment 1, 6, 7

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PETITIONER'S REPLY TO RESPONENT'S BRIEF IN OPPOSITION

Petitioner James D. respectfully offers this Reply to Respondent's Brief in Opposition to the Petition for a Writ of Certiorari. Respondent's hyperbolic argument, cloaked in language suggesting its "reasonableness," intends to distract this Court's attention from the superficial and imperfect reasoning of the lower court. Thoughtful analysis of the Brief in Opposition, and the lower court's opinion, reveals a common disregard for the Fourth Amendment rights of tens of thousands of Californians which this Court must not countenance.

The primary example of Respondent's flawed argument is found in the "statistical justification" for truancy

detentions of people who may appear 16 or 17 years old. The fact that "9 out of 10 16-18 year olds in the state are subject to full time compulsory education" is irrelevant to determining whether random detentions of people who appear to be 16 or 17 years old "advance the public interest" in compulsory education. The privacy interest at stake here is the freedom of youthful appearing people to use public sidewalks and city streets during the school day; this right is of little concern to the vast majority of students, subject to compulsory full time education, who remain upon the school grounds during regular school hours. Thus it is misleading to offer this ratio as justification for the reasonableness of truancy detentions based upon youthful appearance.

As with any demographic analysis, the subject population must bear some relation to the theory being tested. Accordingly, the ratio relevant to the instant analysis of truancy detentions is properly expressed as the number of students absent from school without valid excuse vis-a-vis those people who may physically appear to be school age but are legitimately out in public because they are exempt, excused or have reached the age of 18. In this light the statistics supplied in Respondent's Appendix B are of little, if any, utility. However, employing the proper test groups, the figures *most favorable to Respondent's theory* show that about one in thirty youthful appearing people in public during school hours may be truant.[1] Thus prop-

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1. These statistics do not include single-day totals for unexcused absences for comparison with approximately 110,000 students excused or exempt from full time education.

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er, albeit rudimentary, statistical analysis contradicts the assertion that youthful appearance may supply a reasonable suspicion of truant behavior.

Respondent's correlative theory, that detentions based upon youthful appearance are "the *only effective means* of identifying and locating truants" has neither statistical support, nor has it proven true in practice. A one in thirty chance that an uninformed patrol officer may detain someone actually truant can hardly be characterized as an efficacious means of enforcing compulsory education laws. For instance, the detention of Petitioner, a college student who was subjected to a search of his person, had no relation to identifying him as a truant and displayed the inadequacy of this method of promoting pupil attendance. Additionally, the statutory provisions regarding school attendance review boards and improved pupil attendance provide alternatives to random detentions which are far less intrusive means of identifying and locating truants.

Indeed, Respondent's unsupported assertion that prohibition of such random seizures would "derail the mechanism designed to enforce compulsory education" flies

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(56,629 exempt plus 53,121 excused; see Respondent's Brief in Opposition, p. 14 and Appendix B.) Further, as pointed out in the Petition, the statistics do not encompass those physically less mature people 18 years or older who may be in public places during school hours. Nor can they include those students excused from class for one of the reasons listed in Education Code section 48205. The ratio used for illustration in the text is based upon the statistic for habitual truants and assumes *all* such truants would be absent from school *on the same day,* throughout the school year.

in the face of the legislation itself. To the extent the police have a role to play, the legislation indicates their involvement should be predicated upon a request for assistance from, and close cooperation with, the school district.[2] The very nature of detentions based upon youthful

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2. Education Code section 48320 provides:

> (a) In enacting this article it is the intent of the Legislature that intensive guidance and coordinated community services may be provided to meet the special needs of pupils with school attendance problems or school behavior problems.
>
> (b) Any school attendance review board, established pursuant to this article, which determines that available public and private services are insufficient or inappropriate to correct school attendance or school behavior problems of minors may:
>
> (1) Propose and promote the use of alternatives to the juvenile court system.
>
> (2) Provide, in any proposed alternative, for maximum utilization of community and regional resources appropriately employed in behalf of minors prior to any involvement with the judicial system.
>
> (3) Encourage an understanding that any alternative based on the utilization of community resources carries an inherent agency and citizen commitment directed toward the continuing improvement of such resources and the creation of resources where none exist.

Education Code section 48340 provides:

In enacting this article it is the intent of the Legislature to encourage school districts and county offices of education maintaining any classes in kindergarten and grades 1 to 12, inclusive, to adopt pupil attendance policies based on the active involvement of parents, pupils, teachers, administrators, other personnel, and community members which include proposals and procedures for the following:

(Continued on following page)

appearance belies the claim of any structure or design to such practices; these seizures take place upon the whim of officers on patrol. Clearly, the legislature has designed a mechanism implemented by and within the individual school district, which is effective in identifying truant pupils without unsolicited assistance from police.

Regarding the intrusiveness of such seizures, Respondent focuses on the nature of a truancy *arrest* as being "limited." While the continued validity of that assertion has recently been placed in doubt,[3] again Respondent has sought to divert the Court's attention from the true issue. Simply put, a truancy *detention* has all the attributes of similar seizures in the criminal context. A youthful detainee will be questioned by the authorities and often searched, as was Petitioner. Approval of the police practices in the instant case portends future abuse of this

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(a) Notifying parents of pupil absences, including notification of parents on the day of each absence.

(b) Increasing parent and pupil awareness of the importance of regular pupil attendance.

(c) Auditing and accountability of pupil attendance.

(d) Staff development for certificated and classified personnel.

(e) Alternative learning programs designed to respond to the different ways pupils learn, such as independent study.

(f) Joint efforts between law enforcement and schools, such as school level attendance review teams and periodic efforts to return truant pupils to school.

3. In *In re Michael G.*, 44 Cal.3d 285, — Cal. Rptr. — (1988), the California Supreme Court approved confinement in a secure facility of an habitual truant who was found in contempt of a Juvenile Court order that he attend school. This holding permitted the incarceration of a status offender for contempt provided certain findings were made.

standardless procedure; the questions asked of Petitioner reflect the personal predilections of these officers to extricate an "undesirable" from an exclusive neighborhood rather than a bona fide concern for his educational progress. Insofar as the intrusiveness of a truancy detention is indistinguishable from detention of a criminal suspect, the lower court and Respondent would afford individuals suspected of committing crimes greater Fourth Amendment protections than law-abiding young people who dare venture out into public during the school day.

Finally, Respondent insists youthful appearance is a factor police rely upon in all sorts of investigative detentions. Notably, the examples offered, of driving a car or possessing alcohol, involve highly regulated activities which are *privileges* conferred by the state as opposed to inherent rights of the people under the Constitution. In the former context, this Court has recognized a reduced expectation of privacy "derived from the pervasive regulation of vehicles capable of traveling on the public highways." (*California v. Carney,* 471 U.S. 386, 392 (1985), citation omitted.) Surely it would be anomalous to hold that youthful appearance reduces one's expectation of privacy while in public merely because school is in session somewhere in the community. In this respect "youthful appearance while school is in session" resembles other factors, like "presence in a high crime area," which may be used to justify repeated intrusions into the privacy of people who fall into a category, or are in a particular place, without any consideration of their individual conduct, a practice denounced by this Court and the lower court. (*Reid v. Georgia,* 448 U.S. 438, 441 (1980); *People v. Bower,* 24 Cal.3d 638, 645, 156 Cal. Rptr. 856 (1979); *People v. Aldridge,* 35 Cal.3d 473, 478-479, 198 Cal. Rptr. 538 (1984).)

Because youthful appearance cannot justify a truancy detention, and in the face of Respondent's and the lower court's failure to point out any other fact indicative of truant behavior, the detention of Petitioner violated the Fourth Amendment. To avoid future violations of the Fourth Amendment rights of thousands of young Californians, this Court must prohibit random seizures for truancy investigations by uninformed police officers on routine patrol.

———o———

CONCLUSION

For all the aforementioned reasons Petitioner urges this Court to grant the Petition for Writ of Certiorari and thereafter reverse the decision of the California Supreme Court.

DATED: March 7, 1988

Respectfully submitted,

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